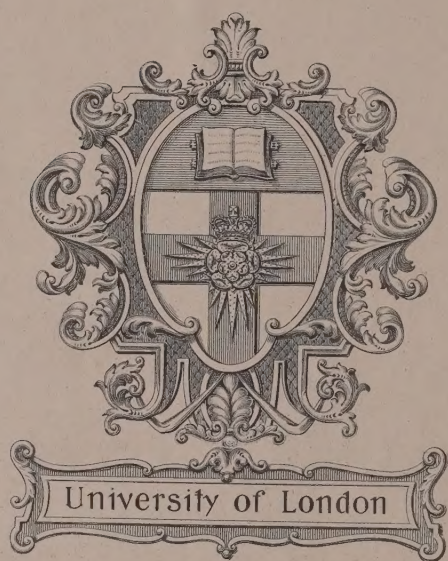


























ACCOUNTS AND PAPERS:

FORTY-FOUR VOLUMES.

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—(41.)—

STATE PAPERS.

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AMERICA (UNITED STATES OF);

BELGIUM; CHINA.

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Session

8 February — 15 August 1876.

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1876.

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## CORRESPONDENCE

RESPECTING

# E X T R A D I T I O N .

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*Presented to both Houses of Parliament by Command of Her Majesty.*  
1876.

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## Correspondence respecting Extradition.

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### No. 1.

*Sir E. Thornton to the Earl of Derby.—(Received March 3.)*

(Telegraphic.)

*Washington, March 3, 1875.*

A MAN named Charles L. Lawrence sailed from Halifax for Queenstown and Liverpool on the 25th of February, under the *alias* of George G. Gordon. He is charged with forgery in the United States, and is a notorious criminal, and Mr. Fish requests that he may be arrested on his arrival. The documents relating to the case will be forwarded by the ensuing mail.

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### No. 2.

*General Schenck to the Earl of Derby.—(Received March 3.)*

My Lord,

*Legation of the United States, London, March 3, 1875.*

I HAVE to-day received by telegraph from Mr. Fish at Washington information that a man named Charles L. Lawrence, 5 feet 7 inches high, stout build, heavy black moustache, mouth very large, dark hair, small grey eyes, sailed from Halifax on the 25th February in the "Caspian" for Queenstown and Liverpool, under the *alias* of George G. Gordon. He is the leader of a band of revenue swindlers in New York. Two indictments for forgery are pending, and charges for at least twenty more. I am instructed by my Government to have this man arrested on his landing at Queenstown in Ireland, or at Liverpool, to be held in custody until the arrival of witnesses and papers on which to make demand for his extradition.

Under these circumstances, and in the interest of both our countries, I have to ask if your Lordship will be good enough to refer the matter to Her Majesty's Home Secretary, and that an order may be issued without delay for the arrest of Lawrence on the arrival of the "Caspian," which may be at Queenstown perhaps as early even as to-morrow, and for his detention until the witnesses arrive.

Any expenses which may attend a compliance with this request will of course be defrayed by the United States.

I have, &c.

(Signed) ROBT. C. SCHENCK.

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### No. 3.

*Mr. Bourke to Mr. Liddell.*

Sir,

*Foreign Office, March 3, 1875:*

I AM directed by the Secretary of State for Foreign Affairs to transmit to you a copy of a letter from the United States' Minister at this Court,\* applying, on the grounds stated in the note in question, for the arrest of Charles L. Lawrence; and I am to request you to move the Secretary of State for the Home Department to take such steps in this matter as may be right and proper, and to inform Lord Derby thereof.

I am, &c.

(Signed) ROBERT BOURKE.

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No. 4.

*Mr. Liddell to Mr. Bourke.—(Received March 4.)*

Sir,

*Whitehall, March 3, 1875.*

WITH reference to your letter of this day's date, relating to one Lawrence, *alias* Gordon, accused of forgery in the United States, and expected to arrive in the "Caspian," I am directed by Mr. Secretary Cross to request that you will inform Lord Derby that a warrant has been issued for his arrest, which will go to Queenstown by an officer to-night, and telegrams have been sent to Queenstown and Liverpool to have him arrested in case the vessel arrives before the officer and warrant.

I am, &amp;c.

(Signed) A. F. O. LIDDELL.

No. 5.

*The Earl of Derby to General Schenck.**Foreign Office, March 4, 1875.*

THE Earl of Derby presents his compliments to General Schenck, and has the honour to inform him that he referred to Her Majesty's Secretary of State for the Home Department General Schenck's note of the 3rd instant, and is now informed that a warrant has been issued for the arrest of Lawrence, *alias* Gordon, accused of forgery in the United States, which was despatched to Queenstown, with a police officer, last night. Telegrams have likewise been sent to Queenstown and Liverpool, directing the arrest of the man in question should the "Caspian" arrive before the officer with the warrant.

No. 6.

*Sir E. Thornton to the Earl of Derby.—(Received March 4, at night.)*

(Telegraphic.)

*Washington, March 4, 1875.*

THE "Caspian" is the name of the steamer in which Lawrence left Halifax.

No. 7.

*Mr. Bourke to Mr. Liddell.*

Sir,

*Foreign Office, March 5, 1875.*

WITH reference to your letter of the 3rd instant, I am directed by the Earl of Derby to state to you, for the information of Mr. Secretary Cross, that a telegraphic despatch has been received from Her Majesty's Minister at Washington, reporting that Lawrence, *alias* Gordon, who is accused of forgery, had left Halifax in the steamer "Caspian," and that Mr. Fish is of opinion that he had better be arrested at Queenstown, because a confederate will meet him at Liverpool.

I am, &amp;c.

(Signed) ROBERT BOURKE.

No. 8.

*General Schenck to the Earl of Derby.—(Received March 8.)<sup>1</sup>*

My Lord,

*Legation of the United States, London, March 5, 1875.*

WITH reference to my note of the 3rd of March, in the case of Lawrence, *alias* Gordon, and to your Lordship's reply of the 4th March, I beg to thank your Lordship, and through you Her Majesty's Secretary of State for the Home Department, for the promptness and courtesy with which my request for the arrest of this man was complied with.

I have, &amp;c.

(Signed) ROBT. C. SCHENCK.



## No. 9.

*Mr. Liddell to Mr. Bourke.—(Received March 10.)*Sir, Whitehall, March 10, 1875.

WITH reference to your letters of the 3rd and 5th instant, I am directed by Mr. Secretary Cross to acquaint you, for the information of the Earl of Derby, that Charles Lawrence or Gordon, charged with forgery at New York, has been arrested at Queenstown on board the "Caspian," and is on his road to London in custody; and I am to request that you will move his Lordship to inform the American Minister of this, and to beg him to suggest that the United States' Government should lose no time in forwarding the warrant and depositions in the charges of forgery preferred against the prisoner, in order that the usual steps may be taken before the Chief Magistrate to prove the offence with which he is charged, with a view to his extradition.

I am, &amp;c.

(Signed) A. F. O. LIDDELL.

## No. 10.

*The Earl of Derby to General Schenck.*Sir, Foreign Office, March 10, 1875.

WITH reference to your note of the 5th instant, I have the honour to state to you that I have been informed by Her Majesty's Secretary of State for the Home Department that Charles Lawrence *alias* Gordon, charged with forgery at New York, has been arrested at Queenstown on board the "Caspian," and is on his road to London in custody; and Mr. Cross has requested me, in informing you thereof, to make the suggestion that your Government should lose no time in forwarding the warrant and depositions in the charge of forgery preferred against the prisoner, in order that the usual steps may be taken before the Chief Magistrate of Bow Street to prove the offence with which he is charged with a view to his extradition.

I have, &amp;c.

(Signed) DERBY.

## No. 11.

*Sir E. Thornton to the Earl of Derby.—(Received March 21.)*My Lord, Washington, March 8, 1875.

I RECEIVED on the 2nd and 3rd instant respectively the two letters from Mr. Fish, of which I have the honour to inclose copies, relative to the arrest of one Charles L. Lawrence, accused of forgery in the United States, who had sailed from Halifax for Queenstown and Liverpool by the steamer "Caspian" on the 25th ultimo, under the *alias* of George G. Gordon.

The anxiety shown by Mr. Fish and the Treasury Department that this man should be arrested must be my excuse for having troubled your Lordship with my telegrams of the 3rd and 4th instant. At the same time, I stated to Mr. Fish that, as he had already telegraphed to General Schenck upon the subject, I could have no doubt that the necessary steps would already have been taken, in concert with the British authorities, for the arrest of the forger.

I have, &amp;c.

(Signed) EDWD. THORNTON.

Inclosure 1 in No. 11.

*Mr. Fish to Sir E. Thornton.*My dear Sir Edward, Washington, March 2, 1875.

ONE Charles L. Lawrence, a notorious criminal, against whom two indictments for forgery are now pending in the United States' Court for New York, and who is

charged with at least twenty additional offences of like character, sailed from Halifax on the 25th ultimo in the "Caspian" for Queenstown and Liverpool, under the *alias* of George G. Gordon, I have telegraphed to General Schenck to have him arrested on his arrival.

The District Attorney of New York suggests that he is informed the practice of the magistrates in Great Britain is not to hold a prisoner on a cable telegram unless advised by the Diplomatic Representative of Her Majesty in the country from which he may have escaped, that there is good ground for the *bona fides* of the arrest.

It is most desirable to the interests of this Government that this offender, represented to be one of the leaders of a class, should be apprehended and brought to justice. Permit me to inquire if the District Attorney be correct with regard to the course likely to be taken by the magistrates in Great Britain, and whether, in case he be correctly informed, any intervention of yours may be secured to secure the arrest and bringing to justice of this fugitive.

I will esteem it a great favour if you will adopt such measures in the premises as will secure the detention of the accused until the necessary documents, which are expected to be forwarded by the next mail, shall have arrived.

I will defray the expense of any cable telegram which you may think proper to send for the purpose referred to.

I am, &c.  
(Signed) HAMILTON FISH.

Inclosure 2 in No. 11.

*Mr. Fish to Sir E. Thornton.*

My dear Sir Edward,

*Department of State, Washington, March 3, 1875.*

REFERRING to my note of last evening in relation to the alleged fugitive Lawrence, I have now the honour to state that I am this moment in receipt of information received by the Treasury Department from the United States' District Attorney at New York, to the effect that Lawrence sailed in the "Caspian" on the 25th ultimo; that the "Caspian" is due at Queenstown on Thursday (to-morrow) morning, and that a warrant having been issued for Lawrence by a Canadian magistrate, the Dominion Government has undertaken to telegraph the Imperial Government in aid of the measures for the arrest of Lawrence, and advised that application should be made to Her Majesty's Minister at this capital to cable to the same effect.

One Hoffinery, a supposed confederate of Lawrence at Liverpool, was advised by cable yesterday, by a brother of Lawrence, of the latter's departure on the "Caspian," under the name of Gordon, and it is presumed that this Hoffinery will meet him at Liverpool, and on this account his apprehension at Queenstown before he can have communication with his friends at Liverpool is desirable.

In view of these newly ascertained facts, I have taken the liberty to bring the matter again to your attention, with a view of securing your prompt intervention in the matter in the way indicated, if you shall feel at liberty to lend your efforts in that way. This Government deems the arrest and trial of Lawrence of great importance in the interest of public justice, and the putting an end to systematic and gigantic frauds upon the public revenue.

I am, &c.  
(Signed) HAMILTON FISH.

No. 12.

*The Earl of Derby to Sir E. Thornton.*

Sir, *Foreign Office, March 24, 1875.*  
WITH reference to your despatch of the 8th instant, I have to state to you that I approve of your having sent telegrams on the 3rd and 4th instant in regard to the arrest of the forger Lawrence.

I am, &c.  
(Signed) DERBY.



## No. 13.

*General Schenck to the Earl of Derby.—(Received April 7.)*My Lord, *Legation of the United States, London, April 5, 1875.*

REFERRING to our correspondence upon the subject of the arrest of Charles L. Lawrence, *alias* Gordon, and especially to your Lordship's note of March 10th, I have the honour to inform your Lordship that I am instructed by Mr. Fish to express to you the appreciation of my Government of the prompt action taken by Her Majesty's Government in this matter.

I have, &c.  
(Signed) ROBT. C. SCHENCK.

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## No. 14.

*Lord Tenterden to Mr. Liddell.*Sir, *Foreign Office, April 8, 1875.*

WITH reference to your letter of the 10th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, the accompanying copy of a note from the United States' Minister at this Court,\* conveying the thanks of his Government for the prompt action taken in the matter of the arrest of Charles Lawrence, *alias* Gordon, charged with forgery at New York.

I am, &c.  
(Signed) TENTERDE

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## No. 15.

*Mr. Liddell to Mr. Bourke.—(Received April 20.)*Sir, *Whitehall, April 17, 1875.*

WITH reference to your letters of the 3rd and 5th ultimo, I am directed by the Secretary of State for the Home Department to acquaint you, for the information of the Secretary of State for Foreign Affairs, that Charles Lewis Lawrence, whose extradition is claimed by the United States' Government, for the crimes of forging and uttering a certain bond, and writing obligatory, and a certain affidavit, with intent to defraud the Government of the United States, was committed by the Presiding Magistrate at the Bow Street Police Court, on the 15th instant, to the Middlesex House of Detention, at Clerkenwell.

The depositions and other documents in the case are returned herewith.

I am, &c.  
(Signed) A. F. O. LIDDELL.

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## No. 16.

*The Earl of Derby to General Schenck.*Sir, *Foreign Office, April 22, 1875.*

WITH reference to your letter of the 5th instant, I have the honour to state to you that I have been informed by Her Majesty's Secretary of State for the Home Department that Charles Lewis Lawrence, whose extradition was demanded by you for the crimes of forging and uttering a certain bond, &c., with intent to defraud the United States' Government, was committed by the Presiding Magistrate at the Bow Street Police Court, on the 15th instant, to the Middlesex House of Detention at Clerkenwell.

The depositions and other documents in the case are returned herewith.

I have, &c.  
(Signed) DERBY.

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## No. 17.

*General Schenck to the Earl of Derby.—(Received April 24.)*

My Lord,

*Legation of the United States, London, April 24, 1875.*

I HAVE the honour to acknowledge the receipt of your note of the 22nd instant, informing me that Charles Lewis Lawrence was committed on the 15th instant, by the Presiding Magistrate at the Bow Street Police Court, to the Middlesex House of Detention at Clerkenwell, for forgery; and I have now to request that the proper department of Her Majesty's Government may issue a warrant for the surrender of the said Lawrence, under the Xth Article of the Treaty of 1842.

Mr. James Mooney, special detective, is authorized by warrant of the President of the United States, to receive and take charge of Lawrence to the United States; and I would ask your Lordship, as the fifteen days delay allowed under the Extradition Act will expire on Friday, the 30th instant, to be so good as to have the warrant for his surrender issued on that day, to enable Mr. Mooney to take the steamer sailing from Liverpool on Saturday, the 31st instant.

I have, &amp;c.

(Signed) ROBT. C. SCHENCK.

## No. 18.

*Mr. Lister to Mr. Liddell.*

Sir,

*Foreign Office, April 24, 1875.*

WITH reference to your letter of the 17th instant, I am directed by the Earl of Derby to transmit to you a copy of a letter from the United States' Minister at this Court,\* requesting that a warrant may be issued for the surrender of the prisoner Lawrence under the Xth Article of the Treaty of 1842; and I am to request that you will move Mr. Secretary Cross to give the necessary directions accordingly, if there should be no objection thereto.

I am, &amp;c.

(Signed) T. V. LISTER.

## No. 19.

*Mr. Liddell to Mr. Lister.—(Received April 27.)*

Sir,

*Whitehall, April 26, 1875.*

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of the 24th instant, transmitting a copy of a letter from the United States' Minister at this Court, requesting that a warrant may be issued for the surrender of Charles Lawrence, a fugitive criminal, whose extradition is claimed by the United States' Government, on the 30th instant; and I am to acquaint you, for the information of the Earl of Derby, that the necessary directions have been given for compliance with the request made by the United States' Minister.

I am, &amp;c.

(Signed) A. F. O. LIDDELL.

## No. 20.

*The Earl of Derby to General Schenck.*

Sir,

*Foreign Office, April 27, 1875.*

I REFERRED to Her Majesty's Secretary of State for the Home Department your note of the 24th instant, requesting that a warrant might be issued for the surrender, on the 30th instant, of Charles Lawrence, charged with forgery, and I have the honour to state to you that I have been informed that the necessary directions have been given for compliance with your request.

I have, &amp;c.

(Signed) DERBY.



No. 21.

*General Schenck to the Earl of Derby.—(Received May 14.)*My Lord, *Legation of the United States, London, May 13, 1875.*

REFERRING to our correspondence upon the subject of the extradition of Charles Lawrence, and especially to your Lordship's note of the 27th April, announcing that a warrant had been issued for his surrender, I have the honour to request that your Lordship will cause a bill of the expenses attending this man's extradition to be made out and transmitted to me, that I may pay it at once.

I have, &amp;c.

(Signed) ROBT. C. SCHENCK.

No. 22.

*Mr. Lister to Mr. Liddell.*Sir, *Foreign Office, May 14, 1875.*

WITH reference to your letter of the 26th ultimo, I am directed by the Earl of Derby to inform you that an application has been received from the United States' Minister at this Court for a bill of the expenses connected with the extradition of Charles Lawrence, as General Schenck is desirous of paying the amount at once; and I am to request that you will move Mr. Secretary Cross to give the necessary directions accordingly, if there should be no objection thereto.

I am, &amp;c.

(Signed) T. V. LISTER.

No. 23.

*Mr. Lister to Mr. Liddell.*Sir, *Foreign Office, May 19, 1875.*

WITH reference to my letter of the 14th instant, I am directed by the Earl of Derby to inform you that an application has been received from the United States' Minister at this Court for a certified copy of the warrant issued by the Home Office for the extradition of C. L. Lawrence, for use in the course of legal proceedings now going on in the United States; and also for early information as to whether the warrant in question described the offence as forgery generally, or specified some particular forgery, and I am to request that you will move Mr. Secretary Cross to give the necessary directions accordingly, if there should be no objection thereto.

I am, &amp;c.

(Signed) T. V. LISTER.

No. 24.

*Mr. Liddell to Mr. Lister.—(Received May 21.)*Sir, *Whitehall, May 20, 1875.*

IN compliance with the request preferred in your letter of yesterday's date, I am directed by Mr. Secretary Cross to transmit to you, to be laid before the Earl of Derby, the inclosed certified copy of the warrant of surrender issued by the Secretary of State in the case of Charles Lewis Lawrence, a fugitive criminal, whose extradition is claimed by the United States' Government, by which it will be seen that the prisoner was surrendered for the crimes of forging and uttering a certain bond and a certain affidavit.

I am, &amp;c.

(Signed) A. F. O. LIDDELL.

No. 25.

*The Earl of Derby to General Schenck.*

Sir,

*Foreign Office, May 21, 1875.*

I HAVE the honour to transmit to you the accompanying certified copy, which has been received from Her Majesty's Secretary of State for the Home Department, of the warrant of surrender issued in the case of Charles Lewis Lawrence, a fugitive criminal, whose extradition is claimed by your Government, by which it will be seen that the prisoner was surrendered for the crimes of forging and uttering a certain bond and a certain affidavit.

I have, &c.  
(Signed) DERBY.

No. 26.

*Mr. Liddell to Mr. Lister.—(Received May 26.)*

Sir,

*Whitehall, May 24, 1875.*

I AM directed by the Secretary of State for the Home Department to transmit to you, to be laid before the Secretary of State for Foreign Affairs, the accompanying account of expenses incurred by Police-Sergeant Shaw in the apprehension of Charles Lawrence, under the Extradition Treaty between this country and the United States of America, and I am to request that you will move Lord Derby to obtain from the United States' Government payment of the sum of 24*l.* 0*s.* 6*d.* in reimbursement of the Metropolitan Police Fund.

I am, &c.  
(Signed) A. F. O. LIDDELL.

No. 27.

*The Earl of Derby to General Schenck.*

Sir,

*Foreign Office, June 1, 1875.*

WITH reference to your note of the 13th ultimo, I have the honour to transmit to you herewith an account of the expenses, amounting to 24*l.* 0*s.* 6*d.*, incurred by Police Sergeant Shaw in the apprehension of Charles Lawrence.

I have, &c.  
(Signed) DERBY.

No. 28.

*General Schenck to the Earl of Derby.—(Received June 4.)*

My Lord,

*Legation of the United States, London, June 3, 1875.*

REFERRING to your note of the 1st instant, I have the honour to inclose to you herewith my check on Messrs. Baring Bros. and Co., for 24*l.* 0*s.* 6*d.*, being the amount of expenses incurred by Police Sergeant Shaw in the apprehension of Charles Lawrence.

I have, &c.  
(Signed) ROBT. C. SCHENCK.

No. 29.

*Mr. Lister to Mr. Liddell.*

Sir,

*Foreign Office, June 4, 1875.*

WITH reference to your letter of the 24th ultimo, I am directed by Lord Derby to transmit to you, to be laid before Mr. Secretary Cross, a cheque for 24*l.* 0*s.* 6*d.*,



which has been received from the United States' Minister in payment of the expenses incurred in the apprehension of Charles Lawrence, and I am to request that a receipt for this sum may be sent to this office for transmission to General Schenck.

I am, &c.  
(Signed) T. V. LISTER.

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No. 30.

*Mr. Liddell to Mr. Lister.*

Sir, *Whitehall, June 16, 1875.*  
WITH reference to your letter of the 4th instant, forwarding a cheque for 24*l.* 0*s.* 6*d.* from the American Minister in repayment of police expenses in the case of Charles Lawrence under the Extradition Treaty with the United States, I am directed by Mr. Secretary Cross to transmit to you, to be laid before the Earl of Derby for transmission to the American Minister, the accompanying Bank of England Certificate, showing that the amount has been duly paid to the credit of the Metropolitan Police Fund.

I am, &c.  
(Signed) A. F. O. LIDDELL.

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No. 31.

*The Earl of Derby to General Schenck.*

*Foreign Office, June 18, 1875.*

THE Earl of Derby presents his compliments to General Schenck, and in reply to his note of the 3rd instant has the honour to return to him herewith the account of the expenses in the case of Charles Lawrence, surrendered under the American Extradition Treaty, together with a Bank of England Certificate of the payment of the amount in question.

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No. 32.

*Colonel Hoffman to the Earl of Derby.—(Received August 24.)*

My Lord, *Legation of the United States, London, August 24, 1875.*

REFERRING to the correspondence in the case of Charles L. Lawrence extradited in April last, I have the honour to inform your Lordship that I have received a communication from my Government stating that the Department of Justice at Washington has requested that steps may be taken to secure the attendance of Sergeant E. Shaw, of the Metropolitan Police Force of London (the detective who arrested Lawrence at Queenstown), at the trial in New York, as his testimony is necessary to identify certain papers found upon the prisoner at the time of his arrest.

In compliance therewith, I am instructed to ask, that your Lordship will be so good as to have the necessary permission given for Sergeant Shaw to proceed to the United States.

The trial will take place early in October, and it is desired that he leave England not later than the 2nd of September next. His expenses of travel, and a compensation for his time and services, will be paid by my Government.

I have, &c.  
(Signed) WICKHAM HOFFMAN.

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No. 33.

*Lord Tenterden to Mr. Liddell.*

Sir, *Foreign Office, August 24, 1875.*  
I AM directed by the Earl of Derby to transmit to you a copy of a letter from the United States' Chargé d'Affaires at this Court,\* requesting permission for

Sergeant E. Shaw, of the Metropolitan Police Force, to attend at the trial of C. L. Lawrence in New York, as his testimony is necessary to identify certain papers found upon the prisoner at the time of his arrest; and I am to request that you will move Mr. Secretary Cross to give the necessary directions accordingly, if there should be no objection thereto.

I am, &c.  
(Signed) TENTERDEN.

## No. 34.

*Mr. Liddell to Lord Tenterden.—(Received August 25.)*

My Lord,

*Whitehall, August 25, 1875.*

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of yesterday's date, forwarding an application from the United States' Government for the attendance of Sergeant E. Shaw, of the Metropolitan Police Force of London, at the trial of C. L. Lawrence, an extradited prisoner, at New York; and I am to suggest, for the consideration of the Earl of Derby, that the matters referred to in the letter from this Department of to-day's date should be brought to the notice of Mr. Hoffman, and that he be informed that Her Majesty's Government, before acceding to the request made by him as to sending out Sergeant Shaw as a witness in the case, would, in the view of the facts referred to in the other letter from the Home Office, require an assurance that Shaw, if sent out, would only be called as a witness against Lawrence to prove the extradition crime for which he was delivered up and no other.

I am, &c.  
(Signed) A. F. O. LIDDELL.

## No. 35.

*Mr. Liddell to Lord Tenterden.—(Received August 25.)*

My Lord,

*Whitehall, August 25, 1875.*

I AM directed by Mr. Secretary Cross to transmit to you, to be laid before the Earl of Derby, the accompanying copies of letters received from Messrs. Lewis and Lewis, Solicitors, and of the replies addressed to them from this Department respecting the case of Charles Lewis Lawrence, surrendered to the United States of America upon a charge of having committed the crimes of forgery and uttering a certain bond and affidavit. (Copy of warrant of surrender inclosed.)

I am desired by Mr. Cross to state that he is of opinion that the information contained in these applications from Messrs. Lewis and Lewis is sufficient to warrant him in coming to the conclusion, that Lawrence is now in custody in the United States, not only upon the charge of forgery, for which he was delivered up to the United States' Government, under the Extradition Treaty now in existence with that Government, but also on charges of conspiracy and smuggling; and that it is apprehended by the parties conducting his defence, that he will be put on his trial for the latter offences, which are not extradition offences at all.

Mr. Cross cannot assume that the American Government would permit such a course to be adopted as being contrary to the 3rd section of the Extradition Act, 1870, by which Act alone (section 27) the American Treaty is kept alive; contrary also to the law which governs the practice of the United States' Government in extradition cases, as laid down in the Act of Congress, 1842, c. 147, sec. 2, and contrary to the general practice of all countries.

Mr. Cross would suggest that Lord Derby should be moved to telegraph at once to Sir E. Thornton, to make inquiry of the United States' authorities, as to whether it is their intention to permit Lawrence, who was delivered up under a warrant of extradition for the crimes of forgery, and uttering a certain bond and affidavit, within the jurisdiction of the United States of America, to be tried for any other crimes than those for which he was so given up.

I am, &c.  
(Signed) A. F. O. LIDDELL.



## Inclosure 1 in No. 35.

*Messrs. Lewis and Lewis to Mr. Cross, M.P.*

Sir,

10, Ely Place, Holborn, London, July 19, 1875.

ON the 30th April last you signed a warrant for the extradition of Charles Lewis Lawrence, late of New York, accused of the crime of forgery and uttering a certain bond and affidavit within the jurisdiction of the United States of America, that he should be received into the custody of Police-Sergeant Shaw and by him conveyed within the jurisdiction of the said United States of America and there placed in the custody of any person appointed by the said jurisdiction, of which warrant you were good enough to furnish us with a certified copy.

By the 3rd section of the Extradition Act, 1870, it is enacted that, among the restrictions that should be observed with respect to the surrender of fugitive criminals:—

“A fugitive criminal shall not be surrendered to a foreign State unless provision is made by the law of that State or by arrangement that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty’s dominions, be detained or tried in that foreign State for any offence committed prior to his surrender, other than the extradition crime proved by the facts on which the surrender is grounded.”

Inasmuch as the law of the United States does not contain such provision, and no “arrangement” appears to have been made as required by law, we assume that the extradition was granted subject to the provisions of the Treaty of 1870. If this be so, the “arrangement” required by such Treaty will have been made by implication. May we ask your early answer to this letter?

We have, &amp;c.

(Signed) LEWIS AND LEWIS.

## Inclosure 2 in No. 35.

*Mr. Liddell to Messrs. Lewis and Lewis.*

Gentlemen,

Whitehall, July 27, 1875.

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of the 19th instant, and to acquaint you, in reply, that Charles Lewis Lawrence was surrendered in pursuance of the Extradition Treaty with the United States, and in accordance with the provisions of the Extradition Act of 1870.

I am, &amp;c.

(Signed) A. F. O. LIDDELL.

## Inclosure 3 in No. 35.

*Messrs. Lewis and Lewis to Mr. Cross, M.P.*

Sir,

10, Ely Place, London, E.C., July 29, 1875.

WE have the honour to acknowledge the receipt of your letter of the 27th instant, in which you state that Charles Lewis Lawrence was surrendered in accordance with the provisions of the Treaty and Extradition Act, 1870. You will, however, observe that probably through inadvertence you have not replied to that portion of our letter in which we drew your attention to the fact that by the 3rd section of the above Act, it is required that no fugitive criminal “shall be surrendered to a foreign State unless provision is made by the law of that State, or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty’s dominions, be detained or tried in that foreign State for any offence committed prior to his surrender, other than the extradition crime proved by the facts on which the surrender is grounded.”

Inasmuch as it would be a dereliction of duty for the accused to have been surrendered to the American Government except in strict accordance with the Act, we desire explicitly to know, inasmuch as no formal arrangement was made, and no provision is made by the law of the United States, whether the arrangement required by the Act was made by implication arising out of the surrender of the accused.

If it were made by such implication (and you will be good enough to say so), we, as solicitors for Mr. Lawrence, shall be satisfied that the law has been complied with; but if otherwise, Mr. Lawrence will be placed in such a position that, by any breach of faith on the part of the American Government, he can be tried for crimes other than those for which he has been extradited. This would place the Home Office in a difficulty far beyond the mere personal question between Mr. Lawrence and the authorities extraditing him.

Inasmuch as ten days elapsed before a reply was sent to our last letter, may we ask prompt attention to it, as the subject is of a pressing nature.

We are, &c.

(Signed) LEWIS AND LEWIS.

Inclosure 4 in No. 35.

*Mr. Liddell to Messrs. Lewis and Lewis.*

Gentlemen,

*Whitehall, August 4, 1875.*

IN reply to your letter of the 29th ultimo respecting the surrender to the United States' Government of Charles Lewis Lawrence, I am directed by Mr. Secretary Cross to acquaint you that this man was delivered to the American authorities upon the implied understanding that he would only be tried for the extradition crime of which he was accused in this country, and considering that the American Law by Act of Congress of August 12, 1842, c. 147, sec. 3, only enables the Secretary of State in the United States to deliver up extradition prisoners to be tried for the crime of which such person has been accused in the United States, Mr. Cross cannot assume that the American Government would ever think of acting so contrary to their own law, and to the general law of extradition in all countries, as to try an extradition prisoner for any other crime than the extradition crime of which he has been accused in the country which delivered him up.

I am, &c.

(Signed) A. F. O. LIDDELL.

Inclosure 5 in No. 35.

*Messrs. Lewis and Lewis to Mr. Cross, M.P.*

Sir, *10, Ely Place, Holborn, London, E.C., August 18, 1875.*

ON the 4th day of August instant you were good enough to communicate to us that the English Government had surrendered this accused person to the American Government to be tried upon the charge—and the charge only—of forgery for which his extradition had been ordered, and we were in hopes that in the face of that communication the American Government would not have hesitated to have proceeded to trial upon that charge only. We have now received, by cable, intelligence from our correspondent in New York, that contrary to good faith and the duties which the American Government owe to our Government, it is the intention of the American Government to put the accused upon his trial for a crime other than that for which he has been extradited. We need hardly remind you that if the American Government should be guilty of such an act it is a gross violation and outrage upon the right of asylum, and in contravention of the Act of Parliament under which the accused has the right to be returned to this country before any new charge is preferred against him. Our correspondent has held an interview with Her Majesty's Minister in Washington, Sir Edward Thornton, and you may readily believe that so high-minded a Minister as Sir Edward Thornton, whilst expressing a strong opinion against the conduct of the American Government, stated his inability to interfere until he receives instructions direct from the Home Government.

In the face of the serious position in which Mr. Lawrence has been placed, we have to ask you, as an act of justice to him, and of good faith between the two countries, that you should at once communicate by cable to Her Majesty's Minister directing him under the circumstances of the case to take such action as the facts warrant. Mr. Lawrence is an Englishman, and although resident in America for some years, has never forfeited his allegiance as a subject of the British Government.

We have, &c.

(Signed) LEWIS AND LEWIS.



## Inclosure 6 in No. 35.

*Mr. Liddell to Messrs. Lewis and Lewis.*

Gentlemen,

*Whitehall, August 20, 1875.*

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of the 18th instant, and, in reply, to point out to you that you do not give any particulars showing that Charles Lewis Lawrence is about to be tried for any crime different from the one for which he was given up under the extradition warrant. If such particulars are forwarded to this Department, and Mr. Cross should find, after reference to Mr. Mullins, who conducted the case for the prosecution before the Chief Magistrate at Bow Street, that the offence for which Lawrence is going to be tried in the United States is not the one with which he was charged in this country, he will then consider what steps should be taken in the matter; but he cannot, upon the mere assertion of the prisoner's adviser, assume that the United States' Government would act in the case in a manner different from that which their own law requires, when a prisoner is given up in the United States under an Extradition Treaty, and contrary also to the common practice of all other countries.

I am, &amp;c.

(Signed)

A. F. O. LIDDELL.

## Inclosure 7 in No. 35.

*Messrs. Lewis and Lewis to Mr. Cross, M.P.*

Sir,

*10, Ely Place, London, E.C., August 23, 1875.*

WE have the honour to acknowledge the receipt of your letter of the 20th instant, in which you state that we do not give any particulars showing that Charles Lewis Lawrence is about to be tried for any crime different from the one for which he was surrendered under the extradition warrant; and also stating that, if such particulars are forwarded to your Department, and the Home Secretary should find, after reference to Mr. Mullens, that the offence for which Mr. Lawrence is going to be tried in the United States is not the one with which he was tried in this country, he will consider what steps will then be taken in the matter. We beg to thank you for the prompt reply to our letter, and the assurance that any want of good faith on the part of the American Government will be followed by the instant interference of Her Majesty's Minister at Washington. We now beg to inclose the printed argument submitted on behalf of Mr. Lawrence to the Solicitor-General of the United States, in which the attorney and counsel of Mr. Lawrence put forward their arguments in support of their contention that neither the law of nations nor the law that now exists gives any right to try Mr. Lawrence for any offence except that for which our Government ordered his extradition.

Although Mr. Lawrence was surrendered for the crime of forgery in having forged a certain bond for the payment of duty to the American Custom-house, which would be a crime in this country, we are credibly informed that the forging of such a document does not constitute a crime according to the statutes in force in the United States; and that being so, Mr. Lawrence is detained, in addition, upon a charge of smuggling and conspiracy, neither of which are offences for which his extradition was or could have been ordered by this Government.

On page 30 of the Argument, the charges upon which Mr. Lawrence is detained and sought to be tried are set out, but we call attention to the whole of the argument, as giving a clear statement of the case, and of the injustice attempted to be perpetrated upon Mr. Lawrence. We also beg to inclose a letter from Mr. S. G. Clarke, one of the partners in the firm of Messrs. Stanley, Brown, and Clarke, attorneys of Mr. Lawrence in New York. This letter is dated the 10th August, and was only received this morning, and begs the interference of the English Government to prevent Mr. Lawrence being tried upon a charge of smuggling and conspiracy. We presume that Mr. Mullens is unaware of what is passing in America, he having simply conducted the inquiry before the magistrate; and his duty and employment ceased when the extradition of Mr. Lawrence was ordered. Mr. Mullens, therefore, probably is unable to give any information upon this subject. We are informed by the Honourable Mr. Stoughton, counsel for Mr. Lawrence, who is now in Europe, that, in the event of Her Majesty's Minister at Washington calling the attention to the infrac-

tion of the Treaty, the American Government (already half convinced of the illegality of its acts) will order Mr. Lawrence to be tried for the offence for which he was extradited and for no other.

We have, &c.  
(Signed) LEWIS AND LEWIS.

Inclosure 8 in No. 35.

*Extract from printed Argument submitted on behalf of Mr. Lawrence to the Solicitor-General of the United States.*

Charles L. Lawrence, a born subject of Great Britain, but subsequently a naturalized citizen of the United States, having departed for England from Canada, was demanded under the Treaty of 1842 upon a charge of having forged certain papers, and, after a hearing in London, he was committed by the magistrate, upon the ground that he had forged, within the Southern District of New York, a bond for the return to the Collector of New York of certain merchandise, purporting to have been executed by one F. L. Blanding, and of having also forged or wrongfully signed his name in the Custom-house in New York to an oath of entry of the merchandise so to be returned. Upon these charges, and these only, Lawrence was surrendered to a detective named Mooney, who was authorized by the United States to receive him, and in the custody of such detective he was brought to this country in the steamer "Scythia," which arrived here on the 13th instant; whereupon Lawrence, instead of being held under the charges for which he was surrendered, was arrested on board said steamer in the port of New York, on three bench warrants, issued out of the Circuit Court of the United States, upon three several indictments found against him in that Court, two for forgery and one for smuggling and conspiracy, neither being founded upon the charges for which he was extradited, and all being based upon offences alleged to have been committed before the departure of said Lawrence for Great Britain, as aforesaid.

After these arrests, the United States' District Attorney for the said district informed the counsel for Lawrence that he did not know on what charges or for what offences the said Lawrence had been extradited, and had not inquired, and that he was informed that the said Mooney had never received from the British Government or any of its officers any warrant or paper stating the offences on which extradition had been ordered, or any paper or warrant of any kind authorizing the taking of said Lawrence to this country. And the said Mooney, on being applied to and questioned by the counsel for said Lawrence, utterly declined to state under or by virtue of what paper or warrant he had received the said Lawrence from the British authorities and brought him to the United States, or whether he had ever received any such paper or warrant; the only statement the said Mooney would make being, that such papers as he had in his possession he had delivered to the said District Attorney.

A decent respect for the honour of our Government and people should lead to the selection of men for a service like that performed by Mooney above the grade of low, quibbling detectives; and a proper regard for the rights of our citizens and of public duty should prevent officials from seeking to conceal, by collusion or other unworthy devices, the charges upon which the surrender of persons under a solemn Treaty had been obtained. Such efforts rarely achieve more than a temporary advantage, and here they have not secured that; for it not only clearly appears from the papers now submitted for what offences the said Lawrence was surrendered, but it also appears not only that he is now under arrest for others, but that the purpose of the District Attorney is to try him for these, and especially upon one charge not comprised in the Treaty—that of conspiracy and smuggling.

The proceedings taken by our Government to establish the charge upon which Lawrence was surrendered were exclusively under an Act of Parliament passed in 1870—the only Act relating to the subject except that of 1873—all prior Acts having been repealed. By this Act of 1870 it is expressly declared that a fugitive criminal shall not be surrendered to a foreign State unless provision is made by the law of that State, or by arrangement, that such criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign State for any offence committed prior to his surrender other than the extradition crime, proved by the facts on which the surrender is grounded. It cannot be urged that this Act is in the least degree inconsistent with the terms of the Treaty, or does more or less than to declare and express its true intent and



meaning. But were this otherwise, the Act would, on principles well settled in our Courts, control in so far as it conflicted with the Treaty. Here, however, there is not only no conflict or want of harmony between the two, but our Government, by taking proceedings under the Act for the extradition of Lawrence, expressly adopted and assented to its provisions, and received him subject thereto, and under the most solemn obligation of duty to the British Government and to Lawrence to hold him in accordance therewith; nor can any mode of reasoning or any excuse be resorted to which will justify our Government in holding or prosecuting him for any offence other than those on proof of which he was surrendered.

To a mind of ordinary intelligence and fairness it seems sufficient to suggest that it could not have been the intention of either party to the Treaty in question to make the ground of surrender a mere pretext for obtaining possession of the person demanded, that he might, upon being surrendered, be tried for any offence, political or otherwise, at the pleasure of the party making the demand. The Act of Parliament of 1870, by its 19th section, expressly prohibits any such trial of a person surrendered on demand of the British Government, and by a Statute of the United States of March, 1869 (15th Statutes at Large, page 337, U. S. Rev. Stat., § 5,275), it is made the duty of the President to take all necessary measures for the transportation and safe-keeping of Lawrence, and for his security against lawless violence, until the final conclusion of his trial for the crimes and offences specified in the warrant of extradition and until his final discharge from custody or imprisonment for or on account of such crimes or offences, and for a reasonable time thereafter, and for such safe-keeping and protection the President may employ the land and naval forces of the United States.

This provision very plainly indicates that its framers assumed the person extradited could be tried only upon the charge on which he should be surrendered, and which should be specified in the warrant of extradition—a paper which it is pretended Mooney never had. Bearing in mind that it is the duty of our Government to demand under this Treaty not merely offenders against the laws of the United States, but violators of the laws of every State in the Union, and it will be seen how necessary it was for the President to be invested with the power thus conferred upon him. He is bound to see that the Treaty is faithfully executed; and if on pretext that a British subject, for instance, residing temporarily within the State of New York, had committed against the laws of that State forgery or murder, the President should demand him of the British Government, and on his surrender the authorities of New York should arrest and hold and proceed to try him for other alleged offences, it would clearly be the duty of the President not to permit this until a reasonable time after the release of the person from the charge on which he was extradited, and this reasonable time is allowed by our statutes to enable the person thus surrendered to return to the country from which he was taken. And the same may be said as to any person, whether a British subject or not; for in no aspect can the Treaty be regarded which does not for its faithful observance demand that any person surrendered under it shall be tried only for the crime on which such surrender was based. To arrest and imprison a person in violation of law by means of its forms, is violence more dangerous and lawless than that which the ruffian exercises by mere brute force, without pretence of writ or warrant; and hence it may be fairly stated that when, in plain violation of the terms on which Lawrence was surrendered, he is forcibly held on charges on which he was not, and indeed could not, be extradited, it becomes the lawless violence mentioned in the Statute of 1869, against which it is the duty of the President to protect him.

The United States is here asked to refrain from violating that faith which it pledged when it demanded and received Lawrence under the Act of 1870 from the British Government, and this can only be accomplished by instructing the District Attorney and Marshal of the Southern District of New York neither to hold or try Lawrence upon any charges other than those on which the order of extradition was based until he has been restored, or has an opportunity of returning to Her Majesty's dominions.

It is, in conclusion, respectfully suggested that, inasmuch as Lawrence is now held in close confinement upon charges other than those on which he was surrendered, and may at any time be called upon to plead to them for the purpose of thus obtaining a jurisdiction over him, to which he is not justly subject, your Excellency is earnestly requested to dispose of the questions on his behalf presented, at as early a day as it may be possible so to do.

It has been suggested that the British officials who surrendered Lawrence may

have waived the performance of that provision of the Act of Parliament, which declares that a fugitive criminal shall not be surrendered unless provision is made by the law of the demanding State, or by arrangement, that he shall not be tried for other offences, &c., than those on which the surrender is grounded.

This suggestion supposes a waiver which could not be made, for the act is supreme and could not be waived or varied by the entire executive power of Great Britain; and the suggestion also supposes, in face of the absence and probable suppression by some one of our officials of all papers relating to the surrender, that British officials colluded with our own to violate the Act, that we might, by a species of kidnapping, acquire unusual and unlawful powers over an alleged smuggler, who had sought an asylum in England.

The honest assumption is here the true one: that he is to be held subject to the arrangement which the Act prescribes, as the condition of his surrender.

Inclosure 9 in No. 35.

*Mr. Clark to Mr. Wolf.*

Dear Sir,

16, Wall Street, New York, August 13, 1875.

I HAVE your note of the 29th with inclosnres. It is all very well as far as it goes, but it does not meet the case, which is this: The Courts hold that they will entertain no inquiry as to the manner in which the accused person may be brought before them, therefore Lawrence may be tried, so far as they (the Courts) are concerned, for smuggling, a non-extraditable offence. In this dilemma we appealed to the Executive of the nation to interpose and direct the Law Officers of the Government to preserve its implied faith. You have our printed pamphlets and know the grounds on which we urge interference. Two principal answers are urged in opposition to our request.

1st. That the Treaty is silent, and that only the machinery of the Act of 1870 applies under the Treaty, and that in respect to prior Treaties, *i.e.*, prior to 1870, the 3rd section of the Act of that year is inoperative.

2nd. That no matter whether inoperative or not, as long as no express pledge was exacted by the British authorities, the United States is at entire liberty to proceed and try Lawrence for any matter it pleases, so long as the British Government does not interfere. In other words that Lawrence, as a suspected criminal, has no standing to invoke the good offices of the Executive to keep an implied faith of our Government with another nation; that the question is one between the two Governments solely.

Without admitting the soundness of either of these objections, we know that the latter objection has great weight with some of our officials, and we fear it may prevail. We wish to obviate it, if possible, by bringing English officials to a sense of the indignity with which our Government is threatening to treat them and the English Government. A word almost from the Home authorities to Sir Edward Thornton to say on behalf of England, that a trial of Lawrence for any offence except that for which he was extradited, would be regarded as inconsistent with the Treaty and the reciprocal obligations of Great Britain in like instances, would, in our opinion, settle the whole matter. Please submit this letter to Lewis and Lewis; find Stoughton also, if in London, and communicate contents to him. I also write S—— by this mail. Let me add further, that our officials admit exactly what the Secretary of State says in his letter of July 27th, *viz.*, that Lawrence was surrendered in pursuance of the Extradition Treaty with the United States, and in accordance with the provisions of the "Extradition Act," of 1870. The point of divergence is that the Treaty being silent, and the surrender being in accordance with the Treaty, as well as with the act, the 3rd section does not apply. That the two must be construed together, and that the Treaty by force of this construction, and particularly by force of the provisions of the 27th section of the Act is paramount, and that the English Government would have been obliged to have surrendered Lawrence without entering into the arrangement required by 3rd section of the Act of 1870.

Comparing dates of letters in your inclosure of July 29th with your cable despatch of August 5th, I infer that a satisfactory reply has been received by Lewis and Lewis to their second letter. I still think, however, that it is extremely desirable to have some suggestions from England made to Sir Edward Thornton. He is, I am satisfied, willing enough to act but does not feel at liberty to take the initiative.

Truly, &c.

(Signed) S. G. CLARKE.



## Inclosure 10 in No. 35.

*Warrant.*

To the Keeper of the Middlesex House of Detention, Clerkenwell, and to Police Sergeant Edward Shaw.

WHEREAS Charles Lewis Lawrence, late of New York, accused of the commission of the crimes of forging and uttering a certain bond and affidavit within the jurisdiction of the United States of America, was delivered into the custody of you the Keeper of the Middlesex House of Detention at Clerkenwell, by Warrant dated the 15th April, 1875, pursuant to the Extradition Act, 1870:

Now I do hereby, in pursuance of the said Act, order you the said keeper to deliver the body of the said Charles Lewis Lawrence into the custody of the said Police Serjeant Edward Shaw; and I command you the said Police Serjeant Edward Shaw, to receive the said Charles Lewis Lawrence into your custody, and to convey him within the jurisdiction of the said United States of America, and there place him in the custody of any person or persons appointed by the said jurisdiction to receive him, for which this shall be your warrant.

Given under the hand and seal of the Undersigned, one of Her Majesty's Principal Secretaries of State, this 30th day of April, 1875.

(L.S.)

(Signed)

RD. ASSHETON CROSS.

## No. 36.

*The Earl of Derby to Colonel Hoffman*

Sir,

*Foreign Office, August 27, 1875.*

I REFERRED to Her Majesty's Secretary of State for the Home Department, your note of the 24th instant, requesting, on behalf of your Government, that permission might be granted for Serjeant Shaw, of the Metropolitan Police Force, to proceed to New York, in order to give evidence at the approaching trial in that city of Charles Lewis Lawrence, who was surrendered under a Warrant of Extradition for the crimes of forgery, and uttering a certain bond and affidavit, within the jurisdiction of the United States.

A reply has now been received from Mr. Cross, inclosing copies of letters received by him from Messrs. Lewis and Lewis, Solicitors; the information contained in which warrants the supposition that Lawrence is now in custody in the United States, not only upon the charge of forgery, for which he was delivered up under the Extradition Treaty now in existence between your Government and that of Her Majesty, but also on charges of conspiracy and smuggling; and it is apprehended by the parties conducting his defence, that he will be put on his trial for the latter offences, which are not extradition offences at all.

Her Majesty's Government cannot assume that that of the United States would permit such a course to be adopted, as being contrary to the 3rd Section of the Extradition Act, 1870, by which Act alone (Section 27), the American Treaty is kept alive; contrary also to the law which governs the practice of the United States' Government in extradition cases, as laid down in the Act of Congress 1848, chap. 147, sec. 2; and contrary to the general practice of all countries; and they have accordingly instructed Her Majesty's Minister at Washington to make inquiries into the matter.

In conclusion, I have the honour to state, that before acceding to the request preferred through you by your Government, for the attendance of Serjeant Shaw, as a witness at Lawrence's trial, Her Majesty's Government would, in view of the facts cited above, require an assurance that Shaw, if sent out to New York, would only be called as a witness against Lawrence to prove the extradition crime, for which he was surrendered, and no other.

I have, &amp;c.

(Signed)

DERBY.

No. 37.

*The Earl of Derby to Sir E. Thornton.*

(Telegraphic.)

*Foreign Office, August 27, 1875, 3:55 P.M.*

I HAVE to instruct you to ascertain and to report to me as soon as possible whether the United States' authorities intend to permit Lawrence to be tried for any other crimes than those for which he was given up, namely, for forging and uttering a bond and affidavit in the United States.

No. 38.

*Colonel Hoffman to the Earl of Derby.—(Received August 28.)*My Lord, *Legation of the United States, London, August 28, 1875.*

I HAVE the honour to acknowledge the receipt of your note of yesterday.

I regret to say that it was by inadvertence that I stated in my note of the 24th instant that the testimony of Serjeant Shaw was wanted on the trial of Lawrence. It should have been on the trial of Robert Des Angles.

On the arrest of Lawrence at Queenstown by Serjeant Shaw, a very important letter in Des Angles' hand-writing was found upon him. It is to prove the discovery of this letter on the person of Lawrence that the presence of Serjeant Shaw is required.

I have the honour to inclose copies of Mr. Fish's despatch, and of the letters addressed to him by the Department of Justice, and to request that Serjeant Shaw may be permitted to proceed to New York at the earliest possible date, as a witness on the trial of Robert Des Angles.

I have, &amp;c.

(Signed) WICKHAM HOFFMAN.

Inclosure 1 in No. 38.

*Mr. Cadwalader to General Schenck.*Sir, *Department of State, Washington, August 9, 1875.*

I TRANSMIT herewith a copy of a letter from the Department of Justice, dated the 6th instant, and of its inclosure, requesting that proper steps be taken to secure the attendance of E. Shaw, of the London Police, on the trial of Robert Des Angles. I will thank you to use such efforts for a compliance with the aforesaid request as you may deem proper and advisable.

I am, &amp;c.

(Signed) JOHN L. CADWALADER, *Acting Secretary.*

Inclosure 2 in No. 38.

*Mr. Phillips to Mr. Fish.*Sir, *Department of Justice, Washington, August 6, 1875.*

I HAVE the honour to transmit herewith a copy of a letter from George Bliss, Esq., United States' Attorney at New York, in which he requests that such action as will secure the attendance of E. Shaw, of the London police, on the trial of Robert Des Angles, and to ask that you will, by correspondence with the proper Representatives of the United States in England, procure the attendance of the person named. His expenses will be paid by this Department, and also a reasonable compensation for his services and loss of time.

Very respectfully, &amp;c.

(Signed) S. F. PHILLIPS,

*Solicitor-General and Acting Attorney-General.*



Inclosure 3 in No. 38.

*Mr. Bliss to Mr. Edwards Pierrepont.**Office of the United States' Attorney, New York,  
August 3, 1875.*

Sir,  
THE trial of Robert Des Anges will undoubtedly take place early in October. At that trial, as I have already informed you, the presence of E. Shaw, Serjeant-Detective of the London Police, is essential, in order to prove the documents found upon Charles L. Lawrence when he was arrested at Queenstown, as these included a damning letter in Des Anges' handwriting. I therefore have to request that application may be made to the Superintendent of the London Metropolitan Police to permit Shaw to attend here, and that satisfactory inducements may be held out to him to come.

He will be subject to extra expenses, and should be compensated.

He should arrange to leave England not later than the 2nd September.

Your, &c.

(Signed) GEORGE BLISS, *United States' Attorney.*

No. 39.

*Sir E. Thornton to the Earl of Derby.—(Received August 28.)*

(Telegraphic.) *Washington, August 28, 1875.*

IN answer to your message of yesterday, the United States' Solicitor-General has given it as his opinion that there is no United States' Law or Treaty stipulation with Great Britain which prevents Lawrence being tried for crimes other than those for which he was given up. I believe he will, therefore, be prosecuted for such crimes, smuggling among them.

No. 40.

*Mr. Lister to Mr. Liddell.*

Sir, *Foreign Office, August 28, 1875.*

WITH reference to your letter of the 25th instant, I am directed by the Earl of Derby to transmit to you the accompanying copy of a further note from the United States' Chargé d'Affaires at this Court, together with its inclosures,\* from which it appears that Serjeant Shaw's evidence is required in the case of Robert Des Anges, who absconded from the British army in 1862; and I am to request that in laying this letter before Mr. Cross you will move him to inform Lord Derby what answer should be returned to Colonel Hoffman's note.

I am, &c.

(Signed) T. V. LISTER.

No. 41.

*Mr. Lister to Mr. Liddell.*

Sir, *Foreign Office, August 30, 1875.*

WITH reference to your letter of the 25th instant I am directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a telegraphic despatch from Her Majesty's Minister at Washington,† stating that he believes that C. L. Lawrence is likely to be prosecuted for other crimes besides forgery.

I am, &c.

(Signed) T. V. LISTER.

No. 42.

*Mr. Liddell to Mr. Lister.—(Received August 31.)*

Sir,

*Whitehall, August 31, 1875.*

WITH reference to your letter of the 28th instant, forwarding copy of a note from the United States' Chargé d'Affaires, requesting that steps be taken to secure the attendance of Police-Sergeant Shaw at the trial of Robert Des Angés, I am directed by Mr. Secretary Cross to state, for the information of the Earl of Derby, that Police Sergeant Shaw will leave England for America on the 2nd September with a view to give the required evidence in Des Angés' case; and that he will be instructed, if he be called upon to give evidence in Lawrence's case, not to give evidence except upon the extradition charges, and for that purpose he will receive a copy of the Secretary of State's warrant, showing the crimes upon which Lawrence was surrendered.

Copies of a letter from the Commissioner of Metropolitan Police, and of a report of Sergeant Shaw with regard to this case, are forwarded herewith for Lord Derby's information.

I am, &amp;c.

(Signed) A. F. O. LIDDELL.

P.S.—This permission has been granted upon the understanding that the officer's expenses will be defrayed by the United States' Government.

Inclosure 1 in No. 42.

*Captain Labalmondière to Mr. Liddell.*

Sir,

*4, Whitehall Place, August 30, 1875.*

WITH reference to the Foreign Office correspondence forwarded this day to this Office, containing a request for the attendance of Sergeant Shaw as a witness at the trial of Robert Des Angés in the United States, I have to inclose, for the information of Mr. Secretary Cross, a report of the particulars of the note from Des Angés being found on Lawrence, and have conveyed to the Sergeant the instructions in your minute for his guidance in America.

I am, &amp;c.

(Signed) D. LABALMONDIÈRE, *Assistant Commissioner.*

Inclosure 2 in No. 42.

*Report by Serjeant Shaw.**Metropolitan Police Office, Scotland Yard, August 30, 1875.*

WITH reference to Charles Lewis Lawrence, alias George Gordon, charged with forgery, I beg to report that, on the 3rd of March last, Colonel Cheseborough, Secretary to the American Legation, called at this office and stated that a cablegram had just been received from Mr. Secretary Fish at Washington to say that Charles L. Lawrence, a notorious swindler, and against whom two indictments for forgery had been laid in the United States, had left in the steamship "Caspian" on the 25th January for Liverpool under the name of George G. Gordon, and that the necessary papers demanding his arrest had been sent by the American Minister to the Foreign Office.

The same evening a warrant signed by Sir Thomas Henry for the arrest of Charles L. Lawrence on a charge of forgery was handed to me by Superintendent Williamson, with directions that I was to proceed to Queenstown, there to await the arrival of the "Caspian," and arrest Lawrence. I accordingly proceeded to Queenstown and did as directed. The "Caspian" reached Queenstown on the 7th, and I went on board of her with Sub-Inspector Mercier, of the Royal Irish Constabulary, and found Lawrence on board in the name of Gordon, and I at once arrested him. I said to him, "I am Detective-Sergeant Shaw, from London, and I hold a warrant for your apprehension for forgery in the United States." He answered, "Let me read the warrant." I handed him the warrant to read. I took him on board the tender, and then asked him, "What



have you got about you?" when he pulled out of his pocket several letters and memoranda, and also a bunch of keys, which he handed to me, saying, "Here are the keys of my trunk." I opened the trunk in his presence with one of the keys, and found in it several letters and sundry papers, the whole of which I took possession of, and conveyed the prisoner to the constabulary barracks at Queenstown. He was taken before the magistrates of that city on the 8th March, and the same evening I brought him to London.

On the following day I made a list of the property taken from the prisoner, which list I handed to Superintendent Williamson, together with the property.

This prisoner was taken before Sir Thomas Henry at Bow Street Police Court on the 10th March, and remanded till the 18th same month. On the 18th he was again brought up before Sir Thomas Henry, when the United States' officer Mooney attended, when the property taken possession of by me at Queenstown was produced, and the officer Mooney called my attention to a small piece of paper, which purported to have been sent by a man named Des Anges, telling Lawrence to look to himself, and that he (the writer) would do the same. The same paper was subsequently handed to me by Mr. Mullens, the solicitor who conducted the prosecution, when in the witness box, and I was asked if it was the same paper found by me on Lawrence when I arrested him at Queenstown. I answered, "Yes, the same." When at the office of Mr. Mullens, shortly afterwards, I wrote my initials on the paper, and I should know it again.

I am unable to say whether Lawrence took the paper in question from his pockets, or if it was among those taken by me from the trunk.

The trunk was taken from the same cabin where I arrested Lawrence.

When the paper was produced at Bow Street Police Court, and I was questioned about it, Lawrence made no remark.

(Signed) F. T. WILLIAMSON, *Superintendent.*  
(Signed) EDWARD SHAW, *Serjeant.*

No. 43.

*The Earl of Derby to Colonel Hoffman.*

Sir, *Foreign Office, August 31, 1875.*

WITH reference to your note of the 28th instant I have the honour to acquaint you that I have been informed by Her Majesty's Secretary of State for the Home Department that Police Sergeant Shaw has been instructed to leave England for America on the 2nd of September, with a view to giving the required evidence at the trial of Robert Des Anges.

I have, &c.  
(Signed) DERBY.

No. 44.

*Sir E. Thornton to the Earl of Derby.—(Received September 3.)*

(Telegraphic.) *Washington, September 3, 1875.*

THE Solicitor-General's opinion has not yet been sent to the District Attorney at New York, but there seems no doubt of the intention of the United States' Government to try Lawrence for crimes other and besides those for which he was surrendered, especially for smuggling silks.

No. 45.

*Mr. Liddell to Mr. Lister.—(Received September 4.)*

Sir, *Whitehall, September 4, 1875.*

WITH reference to your letter of the 30th ultimo, forwarding a copy of a telegraphic despatch from Her Majesty's Minister at Washington, stating that he believes that Charles Lewis Lawrence is likely to be prosecuted for other crimes than that for

which he was surrendered, I am directed by Mr. Secretary Cross to suggest, for the consideration of the Earl of Derby, that instructions should be issued to Sir E. Thornton to protest against the proposed trial of Lawrence on other charges than the extradition offence for which he was surrendered, viz., "forging and uttering a certain bond and affidavit within the jurisdiction of the United States of America."

1. As being contrary to the implied understanding under which he was surrendered.

2. Had any such intention to try for other charges been made known to the Chief Police Magistrate of the Metropolis by Colonel Cheseborough, who was present at the inquiry, the former would have had no power to surrender the prisoner, and certainly would not have done so.

3. That Colonel Cheseborough was well acquainted with the provisions of the English Extradition Act, and, had he known of any such intention on the part of the United States' Government, it was his duty to have stated what he knew; but that it is believed that Colonel Cheseborough had no such knowledge, and never would have thought of asking for Lawrence's extradition for a purpose directly contrary to the English Extradition Act, and to the law of the United States as laid down in the Act of Congress of August 12, 1848, c. 167, sec. 3, which is to this effect:—

"And be it further enacted that it shall be lawful for the Secretary of State, under his hand and seal of office, to order the person so committed to be delivered up to such person or persons as shall be authorized in the name and on behalf of such foreign Government, to be tried for the crime of which such person shall be so accused."

Contrary also to the common practice of extradition all over the world—

4. That should the United States Government persist in trying Lawrence upon charges other than the extradition crime for which he was given up, it can only be regarded by Her Majesty's Government as a violation of the right of asylum, which both countries, by their written law and practice, have always claimed and maintained, and as putting an end to the Extradition Treaty now existing between this country and the United States; for, assuredly, no other prisoner will be delivered up under it, if he is to be tried for offences other than that with which he was charged in this country, and which are not extradition crimes at all.

A copy of the warrant of surrender of Lawrence is inclosed for Sir E. Thornton's information.

I am, &c.

(Signed) A. F. O. LIDDELL.

Inclosure in No. 45.

*Warrant.*

To the Keeper of the Middlesex House of Detention at Clerkenwell, and to  
Police-Serjeant Edward Shaw.

WHEREAS Charles Lewis Lawrence, late of New York, accused of the commission of the crimes of forging and uttering a certain bond and affidavit within the jurisdiction of the United States of America, was delivered into the custody of you the Keeper of the Middlesex House of Detention at Clerkenwell, by Warrant, dated 15th April, 1875, pursuant to the Extradition Act, 1870:

Now I do hereby, in pursuance of the said Act, order you the said Keeper to deliver the body of the said Charles Lewis Lawrence into the custody of the said Police Sergeant Edward Shaw, and I command you, the said Police Sergeant Edward Shaw, to receive the said Charles Lewis Lawrence into your custody, and to convey him within the jurisdiction of the said United States of America, and there place him in the custody of any person or persons appointed by the said United States of America to receive him, for which this shall be your warrant.

Given under the hand and seal of the Undersigned, one of Her Majesty's Principal Secretaries of State, this 30th day of April, 1875.

(Seal)

(Signed)

RICHARD ASSHETON CROSS.



*Mr. Lister to Mr. Liddell.*Sir, *Foreign Office, September 4, 1875.*

WITH reference to my letter of the 30th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a further telegraphic despatch from Her Majesty's Minister at Washington,\* in regard to the trial of C. L. Lawrence.

I am, &c.  
(Signed) T. V. LISTER.

*Sir E. Thornton to the Earl of Derby.—(Received September 12.)*My Lord, *Saratoga, August 30, 1875.*

WITH reference to your Lordship's telegram of the 27th instant, relative to Charles Lewis Lawrence, who was surrendered by the British authorities under a warrant of extradition, on the charge of forgery, and uttering a certain bond or certificate, I have the honour to inform you that the question having been raised whether he could be tried for crimes other than those for which he was given up, it was referred, as I learnt some time ago, to the Attorney-General. But, as Mr. Pierrepont had been retained for the prisoner before he accepted office, he declined to give an opinion upon the question which had arisen, and it was therefore transferred to the Solicitor-General. This gentleman gave his opinion some days ago. I have not seen it; but I understand that it is to the effect that there is no law of the United States, and no Treaty stipulation with Great Britain, which forbid the accused being tried for crimes other than those for which he was given up.

I am told that it is the intention of the Government to try Lawrence for some such crimes, amongst which are frauds upon the revenue with regard to the importation of goods; but upon this point I am making further inquiries. I learn that both Mr. Fish and the Secretary of the Treasury are very desirous that he should be tried and punished for such crimes.

I have, &c.  
(Signed) EDWD. THORNTON.

*Mr. Lister to Mr. Liddell.*Sir, *Foreign Office, September 15, 1875.*

WITH reference to your letter of the 4th instant, I am directed by Lord Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a despatch from Sir E. Thornton,† relative to the intention of the United States' Government to cause Charles Lewis Lawrence to be put upon his trial on charges other than those on which his extradition was granted.

I am to add that the case was referred by Lord Derby on the 6th instant to the Law Officers, for their opinion as to the steps that should be taken in the matter by Her Majesty's Government.

I am, &c.  
(Signed) T. V. LISTER.

*Sir E. Thornton to the Earl of Derby.—(Received September 19.)*My Lord, *Washington, September 6, 1875.*

WITH reference to my despatch of the 30th ultimo, I have received information which came originally from Mr. Bliss, United States' District Attorney at

\* No. 44.

† No. 47.

New York, that the opinion of the Solicitor-General upon the question whether Lawrence could be tried for crimes other than those for which he was surrendered by the British authorities, had not yet been received at Mr. Bliss' office, but that it was understood to be favourable to his being so tried. There seems to be no doubt that under the Solicitor-General's opinion, the District Attorney will place Lawrence upon his trial, as well for other crimes and misdemeanours, as for the specific crime for which he was surrendered. The other offences charged against him, for which it is desired to try him, are chiefly the smuggling of silks, by which he seems to have defrauded the revenue to an immense extent.

I have the honour to inclose three printed copies of the argument presented to the Solicitor-General by the District Attorney, in support of the right to try Lawrence for crimes other than those for which he was given up. If the statements made by Mr. Bliss as to the practice observed in England and Canada are true, they strongly support the pretension of the United States' authorities.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure in No. 49.

*Argument presented to the Solicitor-General by the District Attorney for the Southern District of New York.*

*Office of the United States Attorney for the Southern District of New York,  
New York, May 28, 1875.*

Sir,

THE counsel of Charles L. Lawrence have presented to the President a memorial. The Attorney General having, prior to his appointment, given an opinion in Lawrence's case, the memorial has been referred to you, in accordance with law. By instruction of the Attorney General I beg to submit to you the following views with reference to the application contained in the memorial of Lawrence.

Lawrence was accused of forgery. Before the English magistrate there were presented duly certified copies of two indictments for forgery, and of ten warrants, issued by a United States' Commissioner, charging as many forgeries. He was held by the English magistrate, and extradited by the British Government. I have seen no copy of the warrant of extradition issued by the British Secretary of State, but learn by cable despatch that it says, "forgery of a bond and affidavit." On this state of facts Lawrence's counsel claim that the President should interfere and forbid the trial of Lawrence on any charge except the forgery of one particular bond and affidavit.

I propose to submit reasons why no such interference should take place on the part of the President, and in so doing I propose to urge:

First. That the prisoner has no standing either in court or out of court, to make any claim as to the crime for which he shall be put on trial.

Second. That only the British Government can in any event raise any question of this nature.

Third. That the British Government is estopped by law and its own practice and deliberate declarations, from raising the question.

Fourth. That the utmost claims of international and statutory obligation will be fully met if Lawrence is tried on the particular charge on which he was extradited, and whether convicted or acquitted, may be then tried on other charges.

If I succeed in establishing either of these positions, the application made to the President must be refused, and the trial of this gigantic criminal, through whom and his associates the Government has lost millions of dollars, and the merchants many more, must be permitted to go on in the ordinary way. If on the other hand the trial is to be confined to a single charge, there will be great opportunity, to say the least, of his entire escape, for as our charge is of forgery of the name of a fictitious firm, it will not be difficult for the same skill and corruption which characterized the original crimes to give life in court to the fictitious firm. Hence your decision is of momentous, if not vital, importance.

The President is asked in substance by a criminal to protect him from trial and punishment, because the criminal chooses to claim that if he is not so protected, some slight will be put upon a Foreign Government.

I. The Treaty of 1842 names forgery as one of the crimes for which extradition may be had. Unlike some of the later Treaties, as, for instance, that with Italy, 15



Stat., 131, it contains no provision limiting the trial after extradition to the crime for which extradition is had.

In passing, it may be observed that the mere fact that in other Treaties such a provision is inserted, goes far to show that without such provision no such limitation as is claimed by the prisoner's counsel can be inferred.

1. It has been distinctly held by the Courts in this country, Canada and France, that *they* have nothing to do with the question as to whether an extradited prisoner can be tried for a different crime. Having the prisoner before them, they proceed to try him on any charge presented by the prosecuting officer, *U. S. v. Caldwell*, 8 Blatchford, 131; Paxton's case, stated below; French cases, stated below. Indeed, the mere fact of this application to the President by Lawrence's counsel is a tacit admission that the question is not one to be raised in Court.

2. In practice, under the Treaty with Great Britain, neither Government has considered that there was any limitation after extradition, and both Governments have silently assented to the trial of prisoners for crimes other than those on which they were extradited.

Caldwell, after extradition from Canada for forgery, was held here for bribing an officer, *U. S. v. Caldwell*, 8 Blatchford, 131.

Heilbronn, after extradition from this country for forgery, *ex parte* Heilbronn, 12 Leg. Int. 66, was tried in Great Britain for larceny.

This is so stated by Judge Benedict in *U. S. v. Caldwell*, *ubi supra*. But in the report of the Select Committee of the House of Commons on Extradition (vol. 7 of Reports of Committees, 1867 and 1868), it appears that the solicitor who had charge of the proceedings against Heilbronn was examined. The following are extracts of testimony:—

“Q. What was his (Heilbronn's) offence?—A. Forgery. We pursued him and arrested him in the United States under the Treaty; he took us through all the Courts there up to the Supreme Court at Washington, for he had powerful friends. Then he was ordered to be given up, and when he was tried here he was acquitted of forgery.

“Q. Was that because the offence was not forgery?—A. That was the decision of the learned judge; he did not think it amounted to forgery.

“Q. It was not that the proof was not complete, but that the offence did not amount to forgery?—A. Yes; the man was charged with forging the endorsement to a bill of exchange, and the learned judge who tried the case held that it was not forgery, but that he could be lawfully convicted of stealing the document; and he was convicted of larceny.

“Q. (by Mr. Forster.) Larceny not being an offence for which he could be given up?—A. No.

“Q. (by Mr. Mill.) Was this man convicted for larceny on a separate indictment?—A. Yes, he was charged on two separate indictments, one for forging, and the other for stealing.”

It may be added that the witness states that the case of Heilbronn is the only one in which there was a failure to convict the extradited criminal of the charge on which he was extradited. It was, therefore, the only one in which the right to try on a different charge could have arisen.

Burley, extradited from Canada for robbery, was apparently tried in Ohio for attempt to commit murder. (See case stated below.)

It has been expressly decided by the highest Court in Canada, after elaborate argument, that a man may be tried, convicted, and punished for a different crime from that for which he was extradited. This was so held in Paxton's case, 10 Lower Canada Jurist, pages 11, 212, 352. The case is fully stated in Clarke on Extradition, 2nd edition, page 98. Paxton was extradited from Illinois on a charge of forgery; he was put on trial for altering a forged promissory note. He pleaded the fact, and a jury found “that the prisoner was extradited for forgery, whereas he was actually indicted for altering forged paper.” These proceedings having been set aside, he was again arraigned upon the charge of “altering forged paper,” and when called upon to plead said, “I am here by virtue of an Act of Extradition upon the demand made by his Excellency the Governor-General on the United States, charging me with the crime of forgery, and I protest against being called upon to plead to or to answer any other charge than that for which I was so extradited.” He was nevertheless tried and convicted, and the Court of Appeal held the conviction good. Mr. Clarke correctly observes (p. 100) that, though the crime actually charged was within the Treaty, “the judgment establishes that there is nothing in the law of Canada to prevent the Courts

from trying a surrendered prisoner for a crime other than that for which his extradition was granted."

A similar view was taken in the case of Von Aernam. He was surrendered by the United States upon a charge of forgery (3 Blatchford, 160). On a motion for bail, in Canada, it was urged that his offence was at the most only that of obtaining money by false pretences, which was not within the Treaty. But the Court said, "Even if the prisoner's offence amounted to false pretences only, I should hesitate to bail him under the circumstances under which he has been taken, surrendered, and received into custody. Being in custody he is liable to be prosecuted for any offence which the facts support." (See 4 Upper Canada Rep., C. P., 288; also stated, Clarke on Extradition, 2nd edition, 101.)

The French Courts, after some difference of opinion, have settled down to the view that a man may be tried for crimes other than those on which he was extradited. (See cases fully stated—Clarke on Extradition, 2nd edition, pp. 165, 167, 171, 172, 173, 174.)

Mr. Clarke sums up the French decisions by saying, "The result of the cases is that there is nothing in the French law to prevent the Courts from trying a prisoner for crimes other than that for which his surrender has been granted."

In arguing one of the cases cited by Mr. Clarke, the counsel stated that "in 1855 Carpentier, Grelet, and Parot were obtained from the United States for a particular crime; none of them were ever tried in France for that crime; two of them were found guilty of another crime—one died in gaol; the other is still there undergoing his sentence."

The argument, therefore, of Lawrence's counsel that good faith to the surrendering State forbids the trial of an extradited fugitive upon any charge except the precise one upon which he was extradited, falls to the ground in the light of the practice and decided cases. Nor am I aware that Great Britain has retained either Lawrence or his counsel to protect her honour, and I am sure the United States has not entrusted her interests to a fugitive criminal or his counsel.

3. Not only, however, have England, Canada, France, and the United States, all by express decisions in the Courts, by their own practice, and by their silence, recognized this fact that a man need not necessarily be tried only upon the precise charge upon which he was extradited, but the British Government has deliberately accepted this as the correct rule. Thus, in the testimony before the Select Committee of the House of Commons in 1868, already referred to, the Right Honourable Edmund Hammond, Permanent Under-Secretary for Foreign Affairs, states the views and practice of the British Government. Referring to the case of Burley, extradited from Canada for robbery, but tried in Ohio for assault, with intent to commit murder, Mr. Hammond says:—"The question was referred to the Law Officers in this country, and it was held, if the United States put him *bonâ fide* on his trial for the offence in respect of which he was given up, it would be difficult to question their right to put him upon his trial for piracy or any other offence which he might be accused of committing within their territory, whether or not such offence was a ground of extradition, or even within the Treaty."

And again Mr. Hammond says:—"We admit in this country that, if a man is *bonâ fide* tried for the offence for which he was given up, there is nothing to prevent his being subsequently tried for another offence, either antecedently committed or not."

At another point the Committee took the question up in another aspect. The inquiry was put to Mr. Hammond, "Generally supposing a man is given up under an Extradition Treaty, do we instruct our Minister at the Court of the country to which he is given up, to keep his eye upon the case, or to ascertain what becomes of the man?" The answer given is, "No." Mr. Hammond adds, "We give a man up to be tried by the laws of the country to which he is amenable. I do not think we need follow the man after he leaves this country. All we have to see to is that the man is properly charged with the offence under the Treaty, and that the case is properly made out against him, and that he is properly given up for the offence of which he is charged. After that I do not think we have anything to do with the matter."

In other portions of his testimony, Mr. Hammond speaking, be it remembered, as the representative of the Government, says: "As the case now stands, I think if a person is charged with murder, for instance, abroad, he might, if fairly tried and acquitted of that crime, be tried for anything else save a political offence. . . . In the case of a murder committed in America, I apprehend that if a man given up to the United States on that charge, and taken to the United States, was *bonâ fide* tried



for murder, it would be unreasonable to require that, if acquitted of the murder, he might not be tried for manslaughter or larceny antecedently committed. The view I am endeavouring to express is, that the mere fact of extradition, provided the man given up is tried for the crime for which he is given up, and tried *bond fide*, ought not to serve as a condonation for all crimes antecedently committed by him."

The same Committee, at another stage of their proceedings, referring to the case of Heilbronn (*see ante*), and to the provisions in some of the Treaties limiting the crime for which trial may be had after extradition, say to the witness, who had been the solicitor :—

"Q. The Americans do not make that stipulation, or else you would not have been able to have tried Heilbronn for another offence?—A. No, there is no stipulation of that kind in the case of America.

"Q. As I understand it, the Treaty with America would not prevent our trying a man upon a different offence from that for which he has been given up?—A. It would not. There is no stipulation that he shall not be tried for any other offence."

Not only, therefore, is the practice of England in the Courts different from what is claimed by the prisoner's counsel, but the English Government, acting upon the advice of its own Law Officers, has deliberately decided in a case presented to them, that the practice is correct, has adopted it as a rule of action, and recognizes that such is the effect of our Treaty.

II. But it seems to be claimed that, in spite of these decisions and this Governmental practice, the position is changed by the fact that in 1870, long subsequent to the Extradition Treaty, there was passed in Great Britain the so-called "Extradition Act of 1870." That Act provides that,—

"A fugitive criminal shall not be surrendered to a foreign State, unless provision is made by the law of that State, or by arrangement, that the fugitive criminal shall not, until he has been restored, or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign State for any offence committed prior to his surrender, other than the extradition crime proved by the facts on which the surrender is grounded."

As to this Act it is to be observed,—

1st. That it is an Act of the British Parliament which can only affect British officers and the British Government. If the latter surrenders a prisoner in violation of its provisions without any "law" or "arrangement" as to the charges on which he is to be tried, the English law cannot be set up here to limit the crime for which he is to be tried.

2ndly. The Act of Parliament cannot, without the consent of the United States, affect or abrogate in any respect the Treaty between Great Britain and the United States. That Treaty was made in 1842. It provides (8 Stat., 576) that "the United States and Her Britannic Majesty shall, upon mutual requisitions by them, or their Ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of . . . forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found within the territories of the other."

The obligation on the part of England to surrender is absolute; she has made it so by Treaty, and cannot impose conditions upon the performance of her Treaty obligations without the consent of the United States.

Our Government has been so strenuous upon this point of not permitting a Treaty to be affected by the English Parliament, that Mr. Hammond states that on the 5th October, 1859, Mr. Cass broke off negotiations for a modification of the provisions as to extradition, expressly on the ground that the British Minister notified him that the modification must be made subject to the action of Parliament, and Mr. Cass refused to submit to this.

4th. The English Parliament recognized the fact, that an existing Treaty obligation could not be changed by mere Act of Parliament, and therefore, the English Extradition Act of 1870 was declared not to interfere with existing Treaties.

The 27th Section of that Act repeals, among other Acts, the Act of 6 and 7 Victoria, chapter 76, entitled, "An Act for giving effect to a Treaty between Her Majesty and the United States of America for the apprehension of certain offenders," and the Act 8 and 9 Victoria, chapter 120, entitled "An Act for facilitating execution of the Treaties with France and the United States of America for the apprehension of certain offenders." These two Acts provided for the carrying out of the Treaty of 1842 in its precise terms and without any limitations as to the crime for which he should be tried. As stated above, they are repealed by the Act of 1870, but the

repealing clause adds that "this act (*with the exception of anything contained in it which is inconsistent with the Treaties referred to in the Acts so repealed*) shall apply," &c.

The question as to the meaning of this provision came up before the Court of Queen's Bench in 1873, in *ex parte* Bouvier, 27 "Law Times," N. S., 844; S. C. 42 "Law Journal," Queen's Bench. In that case a prisoner had been held by a magistrate for extradition to France under the Act of 1870. He had been condemned in France *par contumace*, and the judgment there embraced an offence which was covered by the Extradition Treaty with France, and one which was not so covered. The case came before the Court of Queen's Bench on *habeas corpus* to prevent his surrender on the magistrate's warrant, and it was claimed that the clause in the Act of 1870, forbidding extradition unless there was a law of or arrangement with the State which forbade the trial except upon the precise charge of extradition, applied to the case, that the French judgment was indivisible, and, therefore, that the prisoner could not be extradited. The Attorney-General in reply claimed (p. 815) that "the intention was to make a general Act which should apply to all cases except where there was anything inconsistent with the Treaties referred to," and that the provision limiting the crime, for which trial might be had, being "inconsistent with the Treaty, the condition so imposed does not apply to that Treaty." The Queen's Bench in giving its decision says as follows, Cockburn, C. J.: "I rather hesitate to express any decided opinion as to the construction to be put upon the 27th section, although I see plainly what was the intention of the Legislature, that is to say, it was intended, while getting rid of the statutes by which the Treaties were confirmed, to save the existing Treaties in their full integrity and force. This has probably been effected, but is certainly not very clearly expressed. \* \* \* If it were necessary in this case to decide that point, I should have been prepared to do so, and to declare that the object had been accomplished." Mellor, J., is "inclined to agree" with Cockburn, C. J., while Blackburn has "no doubt" that the intention was to save the old Treaties, but is not sure that "the proper language was used to accomplish that end." As there was an affidavit that the French practice was to try only on a charge upon which extradition was obtained, the Court held the prisoner.

Subsequent to this decision the Amendatory Act of 1873 was passed by the British Parliament, and although, as Mr. Clarke well says (*Extradition*, 2nd ed., p. 152), this point was the only one in the law which seemed to call for explanation, it was left wholly untouched.

This decision, it may be observed, wholly disposes of the claim of the prisoner's counsel that, as our Government claimed Lawrence under the English Act of 1870, therefore they are bound by all its provisions. They claimed him under no English Act, but under a solemn Treaty, and the English Act of 1870 expressly excepts that Treaty and its obligations from the effect of the Act.

5th. The British Government having delivered up Lawrence, admittedly, without any law or arrangement as to the crime for which he should be tried, must surely be considered as accepting the decision of the Court of Queen's Bench that the Act of 1870 had no effect upon the United States, or upon fugitive criminals surrendered upon its demand, except in matters of mere procedure in England.

Whether this is so or not, it is obvious, in any point of view, that any objection based upon the English Act of 1870 can be raised only by the English Government. The prisoner has no standing to raise any such objection.

The New York Court of Appeals, in the very recent case of *Adriance v. Lagrave* (14 Am. Law Reg., N.S., 295), where the defendant had been extradited from France, say, "The indictment was for burglary in the third degree, under our statute, and clearly not within the Treaty; but it is not for the defendant to raise this question. The Government of France had power to surrender him for any offence, and even if deceived and defrauded, the defendant cannot interpose in its behalf."

The case, it may be added, is pertinent in connection with other points in the matter now under consideration.

It is obvious that the practice of the British Government in trying criminals extradited from the United States for any offence he has committed, and the view stated by Mr. Hammond, ought to, and doubtless will, prevent that Government from interposing in any way.

In any event, until the British Government does make some demand, it is certain that our Government ought not to violate all practice and precedent to aid the escape of one who has so grossly violated our laws, and so grievously defrauded the Government and the community.

6th. If the British Government should make some demand, based upon their



Statute of 1870, it can only be that he shall not be tried for an offence other than that on which he was extradited, "until he has had an opportunity of returning to Her Majesty's dominions." The Report of the Committee of the House of Commons, already referred to, shows, at Questions 1,239 and 1,242, what is meant by "opportunity to return." It simply means that the prisoner may have the option to be tried for the ether offence, or to go directly back to Great Britain, accompanied by a fresh demand for extradition.

III. The prisoner's counsel bases an argument upon the provisions of Section 5275 of the Revised Statutes. As to these, I desire only to observe that the mere reading of that statute seems to me clearly to show that its object and effect are wholly different from what is claimed by the prisoner's counsel. The provisions in question were passed, I believe, merely to give authority to hold the prisoner in custody after extradition not to limit in any way the crimes for which he might be tried. At the most the statute looks only to a result similar to that stated by Mr. Hammond, as the deliberately accepted British doctrine, namely, that he is to be tried on the charge upon which he was extradited, leaving unaffected the right to try him thereafter for any other offence.

No reading of the statute can, as it seems to me, give it any broader meaning than that. It would certainly be most extraordinary if there is to be incorporated, by inference, into the statute a provision not there in words, and which is wholly at variance with the declarations and practice of the Courts and Governments, and which certainly, in cases in the State Courts, the President would hardly be able to carry out.

I respectfully submit that I have shown—

1st. That the Treaty with Great Britain contains no express limitation as to the crime for which a man may be tried after extradition.

2nd. That in practice, Great Britain, Canada and this country, have, when found advisable, tried extradited criminals for offences other than those on which extradition was had.

3rd. That the Government of Great Britain, under the advice of its Law Officers, has deliberately accepted the view that the country which receives an extradited criminal may try him for offences antecedently committed, other than that for which he was extradited, even though the offence was one for which extradition could not have been had. The only limitation suggested is, that he must first be, in good faith, put on trial for the offence for which he was extradited.

4th. That the British "Extradition Act," of 1870, cannot, and is not intended to have, any application to a case arising under the Treaty of 1842, save in mere procedure to attain the end stipulated for in that Treaty.

5th. That in no view could the British Government demand such an order as the counsel of Lawrence asks the President to make without such a demand.

6th. That the revised Statutes do not confine the trial to the mere charge on which extradition was obtained.

I therefore respectfully submit that the President should be advised not to comply with the request of Lawrence's counsel, but to leave justice to take its ordinary course, a course which should, to say the least, be as free from extra-judicial interference in the case of this gigantic criminal, as in that of an ordinary thief.

I am, &c.

(Signed) GEORGE BLISS,

*United States' Attorney for the Southern District of New York.*

Hon. S. F. Phillips,  
Solicitor-General.

*Sir E. Thornton to the Earl of Derby.—(Received September 27.)*

My Lord,

Washington, September 14, 1875.

I HAVE the honour to acknowledge the receipt of your Lordship's despatches up to the 27th ultimo.

I have, &c.

(Signed) EDWARD THORNTON.

*Mr. F. L. Lawrence to the Earl of Derby.—(Received October 6.)*

My Lord,

54, Tavistock Square, W.C., October 1, 1875.

I BEG most earnestly to call your Lordship's attention to the case of my brother Charles Lewis Lawrence (a British subject), who was arrested here in March last, at the instance of the United States' Government, on a fictitious charge of forgery, trumped up for the purpose of securing his return to the United States, and upon which charge he was extradited.

Since his arrival in New York, and though pressing for a speedy trial on the charge for which he was surrendered (and of which he is innocent), he has been held in prison, and the United States' Authorities refuse positively to proceed to trial on the charge for which the British Government surrendered him, and now are about to try him for acts not comprehended in the Treaty, and in violation of all international law, and the Act of Parliament under which he was given up.

I have, through my solicitors (Messrs. Lewis and Lewis), corresponded with the Right Honourable Mr. Secretary Cross, who has expressed himself very decidedly against the intended infraction of the Treaty, and in his last communication stated that he had sent all the papers in connection with this case to the Foreign Office, for their action and interference.

My excuse for troubling your Lordship in the matter is the fact that I have just received a cable message from New York, stating that the trial of my brother (not for the charge on which he was extradited) is fixed for this month, and urging me to request immediate action to be taken, as Sir Edward Thornton, the British Minister at Washington, whose letter I inclose, claims to be unable to act unless under instructions from the Home Government.

Humbly soliciting your Lordship's mediation in the matter, as detailed above, and awaiting with much anxiety your speedy reply, I am, &c.

(Signed) FREDERIC LOUIS LAWRENCE.

Inclosure in No. 51.

*Sir E. Thornton to Mr. Noah.*

Sir,

Washington, September 2, 1875.

IN reply to your letter of the 30th ultimo, I beg to inform you that I have received no instructions from my Government to make a representation to the Government of the United States with regard to the trial of Charles Lewis Lawrence, nor shall I consider myself justified in taking any step in the matter without further instructions.

I am, &c.

(Signed) EDWD. THORNTON.



## No. 52.

*Mr. Lister to Mr. F. L. Lawrence.*

Sir,

*Foreign Office, October 8, 1875.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 1st instant, calling attention to the proceedings in the case of Charles Lewis Lawrence, whose extradition to the United States was recently granted on a charge of forgery, and I am to state to you that the matter is under the consideration of the legal advisers of Her Majesty's Government.

I am, &amp;c.

(Signed) T. V. LISTER.

## No. 53.

*Sir E. Thornton to the Earl of Derby.—(Received November 16.)*

My Lord,

*Washington, November 1, 1875.*

WITH reference to my despatch of the 14th of September last, I have the honour to inform your Lordship that I have learnt, on the best authority, that the Attorney-General has instructed the United States' District Attorney at New York to the effect that the trial of Charles L. Lawrence is to be proceeded with on the charge of forgery, for which his extradition from England was requested of, and granted by, Her Majesty's Government; and that, if he should be acquitted of that charge, the District Attorney is to await further instructions.

The tendency, however, seems to be that, in case of acquittal with regard to the above charge, Lawrence will be indicted for other crimes, for which extradition is not stipulated between the two Governments.

I have, &amp;c.

(Signed) EDWD. THORNTON.

## No. 54.

*Lord Tenterden to Mr. Liddell.*

(Extract.)

*Foreign Office, November 20, 1875.*

WITH reference to your letter of the 4th of September last, respecting the case of Charles L. Lawrence, who was in April last surrendered to the United States' Government under the Extradition Treaty between Great Britain and the United States of 1843, on a charge of forgery, I am directed by the Earl of Derby to transmit to you, for the information of Mr. Cross, a further despatch, which was received on the 16th instant from Her Majesty's Minister at Washington,\* from which it appears that the United States' Attorney-General has instructed the United States' District Attorney at New York to the effect that the trial of Lawrence is to be proceeded with on the charge of forgery, for which his extradition was granted, and that if he should be acquitted of that charge the District Attorney is to await further instructions.

Under these circumstances Lord Derby would suggest, for Mr. Cross's consideration, whether it would not be advisable that any representation to the United States' Government on this subject, should be, in any case, postponed until after the trial of Lawrence for the extradition crime for which he was surrendered, and that any instructions to Sir E. Thornton should be framed accordingly.

His Lordship's reasons for this suggestion are that, in the event of Lawrence being convicted of this crime, and not being indicted for any other offence, no representation to the United States' Government would be necessary, and that in the event of his being acquitted of the extradition crime, and then indicted for other offences, the opportunity for making a representation to the United States' Government would be a more fitting one than at present.

In the latter case, also, Her Majesty's Government would be acting with a full knowledge of the course which the United States' Government intends to pursue, and would therefore be in a better position to protest, if necessary, than they are at

\* No. 53.

present, as it still appears doubtful whether Lawrence is to be tried for offences other than the extradition crime for which he was surrendered.

Mr. Cross will observe from the inclosed correspondence that, in the letter addressed to the United States Chargé d'Affaires on the 27th August, with reference to the evidence of the Police Officer Shaw, it was intimated that Her Majesty's Government cannot assume that the Government of the United States would permit Lawrence to be put on his trial for offences not extradition offences, which would be contrary both to the law of Great Britain and the United States, and the general practice of all countries.

No. 55.

*Mr. Liddell to Mr. Lister.—(Received November 25.)*

Sir,

*Whitehall, November 24, 1875.*

REFERRING to my letter of the 4th September, I am directed by Mr. Secretary Cross to acquaint you, for the information of the Earl of Derby, that he concludes that Sir Edward Thornton was instructed to protest against the proposed trial of Charles Lewis Lawrence on other charges than the extradition offence for which he was surrendered; but if that has not been done, I am to urge that a telegram should be sent to him to make the protest at once, as it appears from your letter of the 4th of September last, that notice was given to the Foreign Office of the intentions of the American Government.

I am, &c.

(Signed) A. F. O. LIDDELL.

No. 56.

*Mr. Liddell to Mr. Lister.—(Received November 25.)*

(Extract.)

*Whitehall, November 25, 1875.*

WITH reference to my letter of yesterday's date and previous correspondence, requesting that Sir Edward Thornton might at once be instructed to protest against Charles Lawrence being put upon his trial for any other crimes than those of which he was accused in this country, and for which alone he was delivered up to the United States' Authorities, I am directed by Mr. Secretary Cross to submit the following observations for the Earl of Derby's consideration:—

First, it is to be observed that this case cannot be dealt with as an isolated case, or as one to be determined as a dry question of law, as it involves questions of higher and graver character, it being obvious that no more prisoners would be given up by the Chief Magistrate to the United States under the Extradition Treaty of 1842, unless it was proved before him that, either by arrangement between the two countries or by the law of America, no prisoner surrendered by Great Britain to America under that Treaty could be tried in the latter State for any offence other than the offence of which he was accused in this country, and for which he was surrendered.

It has always hitherto been assumed that such arrangement impliedly existed. In nine or ten cases that have occurred since the passing of the Extradition Act of 1870, during the years 1871, 1872, 1873, 1874, and 1875, prisoners have been delivered to the United States without question upon this assumption. It was always taken for granted by the magistrate that the provisions of the Extradition Act were well known to the American Authorities, and that, in their applications for extradition, they recognized such provisions and proceeded under them; and this is illustrated by the letter of the United States' Minister of the 24th April, 1875, when he acknowledges the receipt of the information as to the committal of Lawrence, which set out the precise charge on which he had been committed (Sir Thomas Henry, 15th April, 1875, sent to Foreign Office, 17th April, 1875), and in which he expressly recognizes the operation of the Extradition Act as affecting the surrender of a prisoner under the American Treaty. And this assumption has been strengthened by practice between the two countries since the Extradition Act of 1870 passed, and by the knowledge that, by the Act of Congress of August 12, 1848, c. 167, s. 3, the Secretary of State in the United States has only power to surrender an extradition prisoner to be tried for the crime for which he was accused in America.



The Chief Magistrate, in Lawrence's case, acted on this assumption ; relying with confidence on the previous practice of the American Government.

For the future, the Chief Magistrate has but one of two courses to pursue. He must either continue the old practice and proceed on the Act of Congress above cited, and on the implied understanding that, in surrendering a prisoner to the American Government, he will not be tried for any but the extradition offence ; or he must require proof in each case that an arrangement existed for securing that end (which, as it appears to Mr. Cross, must in that case be in the nature of a Convention between the two countries), or that, by the law of the United States, no such trial could take place.

It is most desirable that this question should, with a view to any future application, be set at rest without further delay, and that great care should be taken that Lawrence, if acquitted on the charge of forgery, should not be in any danger of being tried for any other offence without the firmest protest on the part of this country. Mr. Cross feels that this question of the right of asylum is one above all others upon which public opinion would with justice be highly sensitive.

P.S.—Mr. Cross wishes it to be observed that, while he agrees in the suggestion in the Foreign Office letter of the 20th, which had not escaped his attention, that it would be desirable not to stir in this matter until the time when Lawrence is acquitted of the extradition crime, should that occur, yet, in view of the circumstances above set forth, he fails to see how an earlier protest can be avoided. At any rate, Sir Edward Thornton ought to be in a position to make such protest immediately after the acquittal, and should be quite sure that he will have time and opportunity to do so if it is put off until that event has occurred.

No. 57.

*The Earl of Derby to Sir E. Thornton.*

(Telegraphic.)

*Foreign Office, 5.5 P.M., November 26, 1875.*

I HAVE to instruct you to ascertain from Mr. Fish whether the United States' Government intend to try Lawrence for any crime other than that for which he was extradited ; and if they do intend to do so, you will protest against it.

No. 58.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, November 26, 1875.*

WITH reference to my telegram of this day I inclose, for your information, copies of the correspondence marked in the margin,\* on the subject of the extradition of Charles Lawrence.

I am, &c.  
(Signed) DERBY

No. 59.

*Mr. Lister to Mr. Liddell.*

Sir,

*Foreign Office, November 26, 1875.*

WITH reference to your letters of the 24th and 25th instant relative to the case of Charles Lawrence's extradition, I am directed by Lord Derby to state to you, for the information of Mr. Secretary Cross, that his Lordship has instructed Sir E. Thornton by telegraph to ascertain from the United States' Government whether there is any intention of trying Lawrence for any crime other than that for which he was extradited, and if so, to protest against it.

I am, &c.  
(Signed) T. V. LISTER.

\* Nos. 54 and 56.

No. 60.

*Sir E. Thornton to the Earl of Derby.—(Received November 27.)*

(Telegraphic.)

*Washington, November 27, 1875.*

I HAVE questioned Mr. Fish in the sense of your telegram of yesterday. He says that this Government claims the right to try Lawrence for crimes other than that for which he was surrendered. Mr. Fish cannot say yet whether he will be so tried, but he is informed that the same course has been followed in England. The United States' Government intend first to try Lawrence for the extradition crime, and to do their best to obtain his conviction. They will afterwards decide whether he should be tried for other crimes for which he has not yet been arraigned. Does your Lordship wish me to protest now, or to wait until it is clear that Lawrence will be put on his trial for crimes other than the extradition one?

No. 61.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, November 30, 1875.*

WITH reference to Mr. Lister's letter of the 26th instant, relative to the case of Charles Lawrence's extradition, I am directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross for his opinion and any observations that he may have to offer upon it, a copy of a telegram which has been received from Sir E. Thornton,\* inquiring whether he is to protest at once or to wait until it is clear that Lawrence is to be put upon his trial for crimes other than that for which he was extradited.

I am, &c.  
(Signed) TENTERDEN.

No. 62.

*Sir H. Selwin-Ibbetson to Mr. Lister.—(Received December 2.)*

Sir,

*Whitehall, December 2, 1875.*

MR. CROSS desires me to state that he feels it unnecessary to add anything to the substance of his former communications in reference to the case of Charles Lawrence, whose extradition has been claimed by the Government of the United States. Mr. Cross, however, does not wish to express any opinion on the effect of the decision of *ex parte* Bouvier, or whether the provisions of Section 3 of the Extradition Act of 1870 are absolutely binding in all applications for extradition under any Treaty, anterior to the Act, irrespective of what may be the terms of such Treaty. But he has no doubt that the statutory provisions are binding if they contain nothing inconsistent with the Treaty; and he is at a loss to see that the provision in sub-section 2 of section 3 of the Act, that a person shall not be surrendered unless by the foreign law or arrangement, he is not to be tried for any offence other than the offence for which his extradition is applied for, can be said to be inconsistent with the Treaty which provides for the surrender of the criminal for the crime of which he has been accused in this country, the Act which confirms the Treaty expressly stating that he is to be surrendered, in order to be tried for such crime. The rule "*expressio unius est exclusio alterius*" seems to apply to such a case. If so, in all future applications by the United States for extradition, the Secretary of State and the Chief Magistrate would be as much bound by the provisions of sub-section 2 of section 3 of the Act as if the application had been made under a Treaty subsequent to the Act, and surrender could not be made in the absence of a law of the United States (which has always hitherto been considered to exist), or an arrangement that the criminal surrendered would not be tried for any other offence.

Mr. Cross would also call Lord Derby's attention to the application made by the American Minister, for a certified copy of the warrant for the extradition of Lawrence, and for early information as to whether the warrant described the offence as forgery



generally, or specified some particular forgery. Such application seems to show that at that time the American authorities considered themselves under an obligation not to put Lawrence on his trial for any offence other than that specified in the warrant.

With reference to the allusion in the letter of the American Minister to a case of a surrendered prisoner having been tried in England for a different offence from that for which he was surrendered, Mr. Cross has thought it his duty to make inquiries, and incloses a copy of a letter from Sir Thomas Henry on the subject.

I am, &c.

(Signed) HENRY SELWIN-IBBETSON.

Inclosure in No. 62.

*Sir T. Henry to Mr. Cross, M.P.*

Dear Mr. Cross,

*Police Court, Bow Street, December 2, 1875.*

I INCLOSE letter from Mr. Freshfield, from which you will see that the prisoner who was surrendered by the United States was not tried for any other offence than that for which he was surrendered.

I know of no case since the Extradition Act of 1870 in which a prisoner surrendered by the United States or any other Government has been tried here for any crime other than that for which he was surrendered.

It is for you to say whether Sir Edward Thornton should be requested to ask the United States' Secretary of State to name the case to which he alluded when he stated that a surrendered prisoner had been tried in England for a different offence from that for which he was surrendered.

My belief at present is that no such case has occurred since the Act of 1870 was passed.

Faithfully yours,

(Signed) THOMAS HENRY.

No. 63.

*Mr. Lister to Sir H. Selwin-Ibbetson.*

Sir,

*Foreign Office, December 3, 1875.*

WITH reference to your letter of yesterday's date, I am directed by Lord Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a telegram which has been sent to Sir E. Thornton, on the subject of Lawrence's extradition case.\*

I am, &c.

(Signed) T. V. LISTER.

No. 64.

*The Earl of Derby to Sir E. Thornton.*

(Telegraphic.)

*Foreign Office, December 3, 7.5 P.M., 1875.*

I HAVE received your telegram of the 27th ultimo, and I have now to instruct you to call the attention of Mr. Fish to the English "Extradition Act" of 1870, section 3, sub-section 2, by which this Government is prohibited from surrendering a fugitive criminal to a foreign State, unless provision is made by the law of that State, or by arrangement, that the fugitive shall not be tried for any offence other than that for which he was surrendered. Her Majesty's Government has hitherto believed that the United States' law contained the necessary provisions; but as it now appears from the claim put forward by Mr. Fish in the case of Lawrence that there is no such law, and as the Treaty can only be put in force by the Act of 1870, it will be necessary that an arrangement should be entered into between the two countries, in order that the British Government may be able to comply with future demands for extradition.

You will ask Mr. Fish to furnish you with particulars of the English case to which he refers.

*Sir E. Thornton to the Earl of Derby.—(Received December 4.)*

(Telegraphic.)

*Washington, December 4, 1875.*

IN answer to your Lordship's telegram of the 3rd instant, the view of Mr. Fish is that it is not expedient to come to a specific arrangement, which would require the sanction of the Senate, on the one point in question, particularly when a discussion is going on about the case of Lawrence; but he professes his readiness to conclude an enlarged Treaty if it were possible. He now thinks that Lawrence will be convicted of the crime for which he was surrendered, in which case there will be no longer a question at issue. The cases he refers to are those of Heilbronn, mentioned in the Minutes of the Extradition Commission of 1868, and of Paston in Canada.

No. 66.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, December 4, 1875.*

WITH reference to my telegram of yesterday, I inclose, for your information, a copy of a letter and its inclosures from the Home Office, relative to the case of Charles Lawrence.\*

I am, &c.  
(Signed) DERBY.

No. 67.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, December 6, 1875.*

WITH reference to your letter of the 2nd instant, I transmit to you herewith, to be laid before Mr. Secretary Cross, a copy of a telegram which has been received from Sir E. Thornton on the subject of the extradition of Charles Lawrence.†

I am, &c.  
(Signed) TENTERDEN.

No. 68.

*Sir H. Selwin-Ibbetson to Mr. Lister.—(Received December 7.)*

(Extract.)

*Whitehall, December 7, 1875.*

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of yesterday's date, forwarding a copy of a telegram which has been received from Sir Edward Thornton on the subject of the extradition of Charles Lawrence.

Mr. Cross is of opinion that, if Lawrence is acquitted of the charge on which he was delivered, it is absolutely essential the strongest possible protest should be made against his being tried on any other charge on the grounds already stated.

It has always been understood between the two countries that, under section 27 of the Extradition Act, no new agreement under sections 1 and 2 was required, and that no doubt existed in the mind of either country that the provisions required by section 3 of the Act were fulfilled; otherwise neither in this case nor in any of the many cases which have happened since 1870, would the English Government ever have surrendered any one on extradition.

Mr. Cross does not think that this point has sufficiently been made prominent to the United States' Government, as to the past and present, though he quite agrees in all that has passed with regard to the future.

Mr. Cross must continue to press this point, as he himself entirely shares the sensitiveness of the country as to the question of right of asylum.



No. 69.

*The Earl of Derby to Sir E. Thornton.*

(Telegraphic.)

*Foreign Office, December 7, 6.45 P.M., 1875.*

I HAVE received your telegram of the 4th instant, and I have to instruct you to say to Mr. Fish that Her Majesty's Government have always understood that in both countries the provisions required by section 3 of the Act of 1870 were carried out by a tacit understanding, which has hitherto always been acted upon. Her Majesty's Government could not otherwise, since the passing of the Act of 1870, have surrendered any criminals to the United States.

If Lawrence is acquitted of the crime for which he was given up, you will at once make as strong a protest as possible, on the grounds stated already, against his trial on any other charge whatever. Her Majesty's Government are ready to resume at any time negotiations for an Extradition Treaty with the Act of 1870 as a basis.

No. 70.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, December 7, 1875.*

WITH reference to my telegram of this day's date, I transmit herewith, for your information, a copy of a letter from the Home Office on the subject of Charles Lawrence's extradition.\*

I am, &c.  
(Signed) DERBY.

No. 71.

*Lord Tenterden to Sir H. Selwin-Ibbetson.*

Sir,

*Foreign Office, December 8, 1875.*

WITH reference to your letter of yesterday's date, I am directed by the Earl of Derby to transmit to you herewith, to be laid before Mr. Secretary Cross, a copy of a further telegraphic despatch which has been addressed to Her Majesty's Minister at Washington on the subject of the extradition of Charles Lawrence.†

I am, &c.  
(Signed) TENTERDEN.

No. 72.

*Sir E. Thornton to the Earl of Derby.—(Received December 12.)*

My Lord,

*Washington, November 29, 1875.*

IN compliance with the instruction contained in your Lordship's telegram of the 26th instant, I called upon Mr. Fish on the next day, and inquired whether it was the intention of the United States' Authorities to proceed to the trial of Lawrence for crimes other than that for which his surrender had been demanded from, and granted by, Her Majesty's Government.

Mr. Fish replied that the United States' Government claimed the right to do so; that there was nothing in the Treaty of 1842 which forbade the trial of a criminal for crimes other than that for which he was surrendered, and that he was informed, though he had no personal knowledge of the precise cases, that Her Majesty's Government had on one or more occasions exercised that right.

Mr. Fish informs me that instructions have been given to try Lawrence for the crime for which he was surrendered, and that the United States' Government will use their utmost efforts to secure his conviction; but that there is no doubt that he is supported by some very rich and influential commercial houses both in the United States and in England, who have been accomplices with him in large smuggling

\* No. 68.

† No. 69.

transactions. It would be extremely easy for these men to employ 100,000 dollars or more in suborning or getting rid of a witness, and the prosecution might fail to secure a conviction. In that case the United States' Government might consider it necessary to cause the accused to be tried for crimes other than that for which he was given up.

I replied that whatever might be the wording of Treaty engagements with regard to extradition, the spirit of such instruments was, that criminals should be surrendered only for specified crimes, and tried only for those for which they are given up; and that there is a tacit understanding that they should be tried for no others.

Mr. Fish denied that this was the case where no positive stipulation was made to that effect, that even where such an engagement was inserted in an extradition Treaty, it was more for the purpose of preventing the extradition from being made the pretext for trying the accused for political than for other crimes.

Mr. Fish added that Lawrence had not yet been arraigned for any other crime than that for which he was given up, although he had given bail to appear.

I have, &c.

(Signed) EDWD. THORNTON.

### No. 73.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, December 15, 1875.*

WITH reference to my letter of the 8th instant, and previous correspondence, I am directed by the Earl of Derby to transmit to you herewith, to be laid before Mr. Secretary Cross, a copy of a despatch from Her Majesty's Minister at Washington respecting Charles Lawrence's extradition.\*

I am, &c.

(Signed) TENTERDEN.

### No. 74.

*Sir E. Thornton to the Earl of Derby.—(Received December 20.)*

My Lord,

*Washington, December 6, 1875.*

IN compliance with the instruction contained in your Lordship's telegram of the 3rd instant, I called the next day on Mr. Fish and pointed out to him the provisions of section 3, sub-section 2, of the Extradition Act of 1870, which prohibit Her Majesty's Government from surrendering a fugitive criminal to a foreign State, unless provision is made by the law of that State, or by arrangement, that the fugitive shall not be tried for any offence other than that for which he was surrendered; and I added that, in order to enable Her Majesty's Government to comply with future applications for extradition, it would be necessary that an arrangement should be entered into between the two countries.

Mr. Fish said, that to make such a condition for the extradition of criminals would be incompatible with the terms of the Treaty of 1842, which, before the passing of the Act of 1870, had been interpreted by Her Majesty's Government as it was now interpreted by the United States' Government. This had been made evident by what was said by Mr. Hammond, in answer to questions put to him by the Special Extradition Committee in 1868, and by the trial of Heilbronn for a larceny after he had been acquitted of the extradition crime for which he was surrendered.

But as it appeared to Mr. Fish that the condition of section 3, sub-section 2, of the Act was antagonistic to the extradition Article of the Treaty of 1842, he considered that it was excepted from application to that Article by the 27th section of the Act.

I replied that the Treaty merely stipulated that those accused of certain crimes should be surrendered, and that the condition inserted in the Act was not inconsistent with, nor did it prevent such surrender. I urged, however, that an arrangement should be come to upon this subject, so as to render future difficulties impossible. But Mr. Fish considered it inexpedient to enter into an arrangement upon that sole specific point, which would require the sanction of the Senate. Such an arrangement would be still more inexpedient while the case of Lawrence was pending, and he was



convinced that the Senate would not consent to it. The United States' Government would, however, be much gratified if it could succeed in concluding with Her Majesty's Government such a Treaty as was recently under negotiation, and which would comprise, besides the above-mentioned condition, an enlarged list of offences.

With regard to the case of Lawrence, Mr. Fish had just seen the United States' District Attorney for New York, who had assured him that he hoped to bring about the conviction of the accused for the crime for which he was surrendered; in which case he would not, of course, be tried on any other indictment. He had been indicted, Mr. Fish said, for a number of other forgeries, but for none of these had he been as yet arraigned or called upon to plead.

Mr. Fish added that Lawrence was at this moment in prison on a civil suit, namely, for a debt of upwards of 1,000,000 dollars to the United States' Government; but this was a matter, as he considered, to which the Act of 1870 had no reference.

I have, &c.

(Signed) EDWD. THORNTON.

No. 75.

*Mr. Liddell to Lord Tenterden.—(Received December 24.)*

Sir, *Whitehall, December 23, 1875.*  
I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of the 15th instant, transmitting a copy of a despatch from Her Majesty's Minister at Washington, on the subject of the extradition of Charles Lawrence; and I am to transmit to you, to be laid before the Earl of Derby, the inclosed copy of a Report which has been received from Sir Thomas Henry upon the subject, in which he suggests that Sir Edward Thornton should be requested to call the attention of Mr. Fish to the words of the 3rd section of the American Act of Congress of August 1848, chap. 147, and to request that you will inform Lord Derby that Mr. Cross would recommend that Sir Thomas Henry's suggestion should be acted upon.

I am, &c.

(Signed) A. F. O. LIDDELL.

Inclosure in No. 75.

*Sir T. Henry to Mr. Liddell.*

Sir, *Police Court, Bow Street, December 21, 1875.*  
WITH reference to your letter, I have read the despatch from Sir Edward Thornton, and I beg to observe that in the discussion between Sir Edward and Mr. Fish no allusion appears to have been made to the American Act of Congress, 1848, Chapter 167, the 3rd Section of which provides that the fugitive "shall be surrendered to the foreign Government to be tried for the crime of which he shall be so accused."

I venture to suggest that Sir Edward Thornton be requested to call the attention of Mr. Fish to that section, and to ascertain what construction Mr. Fish puts upon them.

Is the section to be considered restrictive upon the Foreign Government from trying the prisoner for any other crime than that for which he was surrendered? and, if so, is that restriction to be deemed mutual or one-sided?

Mutuality is a fundamental principle in extradition treaties, and applying that principle to the language of the "third" section, I submit that a fugitive surrendered by the United States to a foreign Government could only be tried for the crime of which he was accused, and I contend that the same rule should be observed in the case of a fugitive surrendered to the United States by a foreign Government.

With regard to the cases referred to by the United States' Solicitor-General, it may be enough to say that they all occurred previously to the English Extradition Act of 1870, the 19th Section of which expressly prohibits the trial of a fugitive for any other crime than that for which he was surrendered.

If Mr. Fish should hold that the 3rd Section of the Act of Congress is not

restrictive of the power to try for a different crime I fear that extradition must practically cease between the two countries until a new Treaty can be arranged.

I have, &c.  
(Signed) THOMAS HENRY.

## No. 76.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, December 24, 1875.*

WITH regard to your despatch of the 29th ultimo, I transmit to you herewith, for your information, a copy of a letter from the Home Office, respecting the extradition of Charles Lawrence.\*

I am, &c.  
(Signed) DERBY.

## No. 77.

*Sir E. Thornton to the Earl of Derby.—(Received December 25.)*

My Lord,

*Washington, December 13, 1875.*

IN compliance with the instruction contained in your Lordship's telegram, which I received on the evening of the 7th instant, I called on Mr. Fish at the State Department on the 9th instant, and informed him that Her Majesty's Government had always understood that no doubt existed, in either country, that the provisions required by section III, sub-section 2, of the Extradition Act of 1870, were fulfilled, by a tacit understanding which had always been acted up to; for that, otherwise, Her Majesty's Government could not have surrendered any criminals to the United States since the passing of the Act of 1870. Mr. Fish repeated that this was certainly not the understanding before that Act was passed; for that it had been plainly stated by Mr. Hammond before the Extradition Committee in 1868, that it had been the practice both in England and the United States, to try surrendered criminals for crimes other than those for which they had been given up, and that no objection had been made to that course on either side. Mr. Fish maintained that the provisions of sub-section 2 of section 3 were inconsistent with the Xth Article of the Treaty of 1842, and that, therefore, by section 27, that part of the Act did not apply to the United States.

I replied that these provisions were not so inconsistent, but merely laid down a condition upon which the terms of the Treaty could be carried out. I also drew Mr. Fish's attention to the wording of the 3rd section of the Act of Congress of August 12, 1848, by which the Secretary of State was authorized to order the criminal to be delivered up "to be tried for the crime of which such person shall be so accused." I said that it was evident that this was the only crime for which he could be tried. But Mr. Fish demurred to this conclusion, and added that the practice had been otherwise in both countries.

Mr. Fish requested me to assure your Lordship that the United States' Government would be glad to conclude a new Treaty upon the subject of extradition, but that he was convinced that it would be impossible to induce the Senate to sanction the Article which intrusted to the police magistrate the decision of what was to be considered a political crime, unless Her Majesty's Government would authorize me to state, in a Protocol, or Note, that the Government itself would take the whole responsibility of such decision. I answered that Her Majesty's Government found it impossible to agree to such a proposal.

Mr. Fish added that, with regard to Lawrence, he had reason to hope that he would be convicted on the extradition crime, so that there would then be no question at issue; but I pointed out to him that, as the question had now been raised, it might be difficult to surrender criminals hereafter, unless Her Majesty's Government was assured by that of the United States, that the surrendered criminal should be tried only for the crime on which his surrender was demanded.

I understand that Lawrence's trial is to begin on the 15th instant, and, if he should



be acquitted, I shall, in compliance with your Lordship's instructions, at once protest against his being tried for any other offence.

I have, &c.  
(Signed) EDWD. THORNTON.

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No. 78.

*Sir E. Thornton to the Earl of Derby.—(Received December 25.)*

My Lord,

*Washington, December 14, 1875.*

MR. MORRILL, a Senator from Vermont, yesterday submitted to the Senate a resolution to the effect that the Committee on Foreign Relations should be instructed to inquire into the expediency of providing, by general law, for the extradition of fugitives from justice upon the proper application and proof by the Governments of the countries from which they may have escaped, and also as to the propriety of refusing asylum to fugitive criminals, and removing them from the country.

The resolution was considered by unanimous consent, and agreed to.

I have, &c.  
(Signed) EDWD. THORNTON.

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No. 79.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, December 28, 1875.*

WITH reference to my letter of the 6th instant, I am directed by the Earl of Derby to transmit to you herewith, to be laid before Mr. Secretary Cross, a copy of a despatch from Her Majesty's Minister at Washington respecting the extradition of Charles Lawrence.\*

I am, &c.  
(Signed) TENTERDEN.

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No. 80.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, December 30, 1875.*

WITH reference to my letter of the 28th instant, I am directed by the Earl of Derby to transmit to you herewith, to be laid before Mr. Secretary Cross, a copy of a despatch from Her Majesty's Minister at Washington,† reporting a further conversation with Mr. Fish on the extradition of Charles Lawrence.

I am, &c.  
(Signed) TENTERDEN.

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No. 81.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, December 31, 1875.*

I AM directed by the Earl of Derby to transmit to you herewith, to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington,‡ reporting that a resolution had been presented to the United States' Congress, respecting the extradition of fugitives.

I am, &c.  
(Signed) TENTERDEN.

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*Sir E. Thornton to the Earl of Derby.—(Received January 2, 1876.)*

My Lord,

Washington, December 20, 1875.

I HAVE the honour to inform your Lordship that Charles L. Lawrence was arraigned, on the 13th instant, in the United States' Circuit Court at New York, to plead to the indictment against him, charging him with forging the name of F. L. Blanding to owners' oaths and importers' entries, and also with presenting the same at the Custom-house, with intent to defraud the United States. By the advice of his counsel, the prisoner pleaded not guilty to the count alleging forgery, but declined to plead upon the others on the ground that, having been surrendered on the alleged forgery alone, he could not be compelled to plead to any other alleged crime. The Judge then ordered that a plea of not guilty should be entered. I understand that the objectionable counts charged Lawrence with an offence created by an Act of Congress, viz., the presenting to an officer of the Customs a forged, or false, or fraudulent document, with intent to defraud the Government.

On the 16th instant Lawrence's case was again called, and his counsel then moved that the objectionable counts, to which the prisoner had refused to plead, should be struck out; but the Judge refused to grant the motion. I have the honour to inclose two copies of the report of the proceedings as published in the newspapers.

As, however, Mr. Fish has several times stated to me that Lawrence will first be tried for the offence for which he was surrendered, I take it for granted that this course will really be followed, and shall not enter a protest until I shall be informed of the result of this trial, which, as I understand, will begin to-morrow.

I have, &c.

(Signed) EDWD. THORNTON.

Inclosure in No. 82.

*Extract from the "New York Times."*

THE LAWRENCE INDICTMENT: A MOTION TO STRIKE OUT THE PLEAS DIRECTED BY JUDGE BENEDICT REFUSED.—The case of Charles L. Lawrence, indicted for the alleged forgery of owners' oaths and importer's entries, and presenting the same at the Custom-house, was again called in the United States' Circuit Court yesterday morning before Judge Benedict.

Mr. Stoughton, Associate Counsel for the defendant, then moved that the Court strike from the record the five pleas of not guilty, which, by direction of the Court, had been entered when the defendant declined to plead to these counts. This would give them the required opportunity to move to quash these counts, and perhaps the entire indictment. A brief of some length was read in support of the motion, including copies of the warrant of commitment in England, and that of extradition, and the various letters of instruction which had been received by the United States' District Attorney from the Department of Justice, &c. He said the only charge made in England was that of forgery. He was not extradited from Great Britain for the other alleged offence. The defendant had addressed himself to the President in the matter, and the latter had expressly directed the District Attorney not to proceed on the other charges, this under date of May 22, 1875. Similar instructions had been received at times from the Department of Justice, and from Attorney-General Pierrepont, on November 17, 1875, that Lawrence was to be tried only on the charge for which he was extradited, the future course to be determined upon at the conclusion of this trial. He read section 362 of the Revised Statutes of the United States, giving the Attorney-General full jurisdiction in the matter. The District Attorney was acting in violation of the express directions of the Department of Justice having authority over cases of this character. Bringing a person here upon one charge to try him on another would by any honourable Government be looked upon as a trick. The instructions from the Department of Justice spoke of "grave reasons" for the course taken, and this seemed to hint that Great Britain might interfere if the Treaty was thus violated.

Assistant United States' District Attorney Foster said he was placed in rather a delicate position in the absence of Mr. Bliss, in answering to his alleged disloyalty and



imputed insubordination. He considered the question a political one and not the business of a Court of Justice.

"As well as a judicial one," said Mr. Stoughton.

Mr. Foster continued saying that the Court had never received any instructions, and could receive none in the matter. The Court had merely to try such cases as were brought to its notice by the proper officer. That the District Attorney had overstepped his instructions was not a question to be settled at that time.

Mr. Stoughton said that the District Attorney, with the originals of these papers in his office, in the face of explicit and of repeated instructions, still insisted that Lawrence should be arraigned on the other charges, disregarding the highest authority in the United States. The Treaty was a law of the land, and Lawrence had rights under that Treaty.

Judge Benedict said that the question was not a new one, but the application was now made more formal. The statute required the Court in instances of this kind to enter a plea when the defendant shall refuse to make it. The instructions read did not require any abatement of the requirements of the Court under the statute. They did not afford a ground for the refusal to listen to the motion of the District Attorney, who was authorized to represent the Government. There was no responsibility resting with the Court. The responsibility of obeying instructions received rested with the District Attorney, the only representative of the United States in the Court who should make the application, if to be considered at all. He could see no reason that would warrant the action of the Court in these premises, and would pass no opinion upon the action taken by the District Attorney.

B. F. Tracy, also of defendant's counsel, then read a petition from Lawrence reciting that he had learned that the alleged forged entries had been taken from the Custom-house and are now in the possession of the District Attorney, and asked that the Court order them to be deposited with the Clerk, and that defendant's counsel be allowed to inspect them, and thereby prepare their defence. Mr. Foster said he considered this a novel proposition. In his researches he had never met with any authority for such a request, or even heard of such an one being made in Court. Some further argument followed, after which Judge Benedict said he thought the petition ought to be granted, upon the presumption that the papers were in the possession of the District Attorney. Mr. Foster said he should move the case for trial next Tuesday. Mr. Tracy asked that it might be tried with two Judges on the bench. Judge Benedict said he did not think this could be done, but that he would confer with Judge Johnson, whom he should like very much to have with him during the trial.

No. 83.

*Lord Tenterden to Mr. Liddell.*

Sir, *Foreign Office, January 6, 1876.*  
 WITH reference to my letter of the 30th ultimo, and previous correspondence, I am directed by the Earl of Derby to transmit to you herewith, to be laid before Mr. Secretary Cross, a copy of a despatch from Her Majesty's Minister at Washington,\* respecting the trial of Charles Lawrence.

I am, &c.  
 (Signed) TENTERDEN.

No. 84.

*Lord Tenterden to Mr. Liddell.*

Sir, *Foreign Office, January 6, 1876.*  
 I AM directed by the Earl of Derby to transmit to you herewith, to be laid before Mr. Secretary Cross, a copy of a despatch from Her Majesty's Minister at Washington,† reporting that a Resolution had been presented to the United States' Congress, respecting the extradition of fugitives.

I am, &c.  
 (Signed) TENTERDEN.

*Mr. Liddell to Lord Tenterden.—(Received January 7.)*

Sir,

*Whitehall, January 6, 1876.*

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letters of the 28th and 30th ultimo, forwarding copies of two despatches from Her Majesty's Minister at Washington, respecting the extradition of Charles Lawrence; and in reply, I am to submit to you, to be laid before the Earl of Derby, the inclosed copy of a Report which has been received from Sir Thomas Henry upon the subject, and to request that you will convey to his Lordship Mr. Cross' concurrence with the views expressed by Sir Thomas Henry.

I am, &c.

(Signed) A. F. O. LIDDELL.

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Inclosure in No. 85.

*Sir T. Henry to Mr. Liddell.*

Sir,

*Police Court, Bow Street, January 4, 1876.*

WITH reference to your letters, I have read the two despatches from Sir Edward Thornton, and it seems to me it will be useless to make any further effort to endeavour to convince Mr. Fish that a fugitive surrendered to the United States ought not to be indicted for any other crime than that for which he was claimed.

Sir Edward Thornton has in vain urged that it would be contrary to the English Extradition Act, contrary to the Act of Congress of August 1848, and contrary to the principle recognized by every other country that a fugitive cannot be tried for a crime different from that for which he was surrendered.

So fully is this principle recognized, that it is scrupulously observed by every European Government, whether there is any stipulation in the Treaty to that effect or not; in the Treaty between England and France there is no stipulation upon the subject, but neither country would think of trying a fugitive for a different crime. Mr. Fish demurs to these arguments, and upon what does he rely?

Upon some answers that were given by Mr. Hammond in his evidence before the Select Committee on Extradition in 1868, and upon "Heilbronn's" Case, which was quoted before the Committee by Mr. Mullens.

I have referred to the answers given by Mr. Hammond; they will be found under the Nos. 44, 46, 1031, and 1032 in the Blue Book, and they relate to one case only, namely, the case of "Burley;" it was a Canadian case, and I think it will be seen that Mr. Hammond had not a very perfect knowledge of what occurred in that case; but, as Mr. Fish has relied upon it, I would beg to refer to the Report which the Committee made after having heard the evidence of Mr. Hammond, and of other witnesses who differed from him. In page 111, resolution 7, it will be found that the Committee reported that every arrangement should contain an express stipulation that "no person shall be put upon his trial, &c., for any crime other than that on account of which he was surrendered."

It was in pursuance of that Report that section 3 of the Extradition Act was introduced.

I will now refer to "Heilbronn's" case, which is alluded to by Mr. Mullens, the solicitor, who gave evidence before the Committee; his account of it will be found in his answers 1152 to 1160, and it will be seen that it was a private prosecution which was conducted by Mr. Mullens, as solicitor for the private prosecutor, and that the English Government had nothing whatever to do with the trial, and probably knew nothing about it. The trial took place in 1854, more than twenty years ago, and at that period the Law of Extradition was very little known either in England or the United States, and it did not occur to anyone to raise any objection to the prisoner being tried for a second offence.

Having given the particulars of the two cases upon which Mr. Fish has relied, I submit that they do not furnish a sufficient answer to the arguments put forward by the English Government in support of their contention that the prisoner Lawrence ought not to be tried for any other crime than those for which he was claimed and surrendered.

Mr. Fish having expressed a hope that Lawrence would be convicted upon the



"Extradition Crime," so that there would then be no question at issue, Sir Edward Thornton very properly pointed out that the question had been raised; and, whether Lawrence be convicted or not, it will, I think become necessary to communicate officially to Mr. Fish that the claim which he made to try a fugitive for a different offence will render it impossible for the English Government to surrender another fugitive until a new Treaty or arrangement shall have been entered into between the two countries.

Mr. Fish has expressed his desire for a new Treaty; the English Government has frequently done so, and I have no doubt that they would be ready to agree to a Treaty similar to any one of the many Treaties which they have made with other countries since the Extradition Act of 1870.

The condition which Mr. Fish wishes to impose with regard to political offences is one with which it would be impossible to comply; but after an experience of upwards of thirty years, I can say that I have never known a single instance in which there was any occasion to consider whether there was anything of a political character in the offence charged, and I therefore think there is no cause for the least alarm upon that ground.

Extradition Treaties are in the nature of Mercantile Treaties, and are intended to afford protection chiefly against dishonest clerks and fraudulent bankrupts.

Apologising for the length at which I have written, I have, &c.,

(Signed) THOMAS HENRY.

No. 86.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, January 8, 1876.*

WITH reference to your despatches of the 6th and 13th ultimo, respecting the case of Charles Lawrence, I transmit to you herewith, for your information, a copy of a letter from the Home Office on the subject.\*

I am, &c.  
(Signed) DERBY.

No. 87.

*Sir E. Thornton to the Earl of Derby.—(Received January 10, 1876.)*

(Extract.)

*Washington, December 27, 1875.*

WITH reference to my despatch of the 20th instant, I have the honour to inform your Lordship that some doubt seems to have been entertained by the Attorney-General of the United States, whether Mr. Bliss, the United States' District Attorney at New York, who is charged with the prosecution of the forger, Charles L. Lawrence, was not disposed to cause the accused to be at once tried for crimes other than that for which he was surrendered by Her Majesty's Government. In consequence of this suspicion, it would appear that the Attorney-General has addressed a letter to Mr. Bliss, reminding him of the instructions which had been already sent to him, and repeating that Lawrence must be first tried for the crime for which he was surrendered, and for no other, and that any subsequent proceedings must await the orders of the President.

The trial of Lawrence for the crime for which he was surrendered, has been, at his petition, deferred till this day week, in order to give his counsel time for further preparation.

No. 88.

*Sir E. Thornton to the Earl of Derby.—(Received January 11, at night.)*

(Telegraphic.)

*Washington, January 11, 1876.*

THE trial of Lawrence will begin to-morrow. I am told that even in the event of his acquittal, the Attorney-General is greatly opposed to his trial on any other

charge, and that the President and Mr. Fish are coming round to his views. This being the case, I would suggest that I had better, if Lawrence is acquitted, first state my reasons and say that Her Majesty's Government hope he will not be tried on any other charge; and then, if I find that it is really intended to try him for another crime, I can enter a solemn protest against such a proceeding.

No. 89.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, January 12, 1876.*

WITH reference to my letter of the 6th instant, I am directed by the Earl of Derby to transmit to you herewith, to be laid before Mr. Secretary Cross, a copy of a telegram from Her Majesty's Minister at Washington,\* respecting the trial of Charles Lawrence.

I am to add that his Lordship proposes, with Mr. Cross' concurrence, to approve the course suggested by Sir E. Thornton.

I am, &c.  
(Signed) TENTERDEN.

No. 90.

*Mr. Liddell to Lord Tenterden.—(Received January 13.)*

Sir,

*Whitehall, January 12, 1876.*

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of this day's date, forwarding a copy of a telegram from Her Majesty's Minister at Washington respecting the trial of Charles Lawrence; and I am to acquaint you in reply, for the information of the Earl of Derby, that his Lordship's proposal to approve the course suggested by Sir Edward Thornton meets with Mr. Cross' entire approval.

I am, &c.  
(Signed) A. F. O. LIDDELL.

No. 91.

*The Earl of Derby to Sir E. Thornton.*

(Telegraphic.)

*Foreign Office, January 15, 1876, 5.10 P.M.*

IN answer to your telegram of the 11th instant respecting Lawrence, Her Majesty's Government approve of the course you propose to adopt.

No. 92.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, January 15, 1876.*

I HAVE received your telegraphic despatch of the 11th instant, on the subject of the Lawrence extradition case, and I have to convey to you the approval of Her Majesty's Government of the course which you intend to adopt with reference thereto.

I am, &c.  
(Signed) DERBY.

No. 93.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, January 15, 1876.*

WITH reference to my letter of the 6th instant, I am directed by the Earl of Derby to transmit to you herewith, to be laid before Mr. Secretary Cross, a copy of a

\* No. 88.



further despatch from Her Majesty's Minister at Washington respecting the trial of Charles Lawrence.\*

I am, &c.  
(Signed) TENTERDEN.

## No. 94.

*Sir E. Thornton to the Earl of Derby.—(Received January 16.)*

(Extract.)

*Washington, January 3, 1876.*

I BELIEVE that the trial of Lawrence is proceeding to-day at New York. I shall be guided by its result as to protesting against his being subsequently tried for any other offence than that for which he was surrendered.

## No. 95.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, January 18, 1876.*

WITH reference to my letter of the 15th instant, I am directed by the Earl of Derby to transmit to you herewith, to be laid before Mr. Secretary Cross, an extract of a despatch from Her Majesty's Minister at Washington, with regard to the trial of Charles Lawrence.†

I am, &c.  
(Signed) TENTERDEN.

## No. 96.

*Mr. Liddell to Lord Tenterden.—(Received January 21.)*

Sir,

*Whitehall, January 20, 1876.*

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of the 18th instant; and I am to acquaint you, in reply, for the information of the Earl of Derby, that the Secretary of State is obliged by this communication, and that he feels quite sure that Sir Edward Thornton cannot too strongly press upon the United States' authorities the views which have been communicated to him by Her Majesty's Government; the question as to the right of asylum being one of the special points upon which the instincts of the whole of this country are most keenly alive.

I am, &c.  
(Signed) A. F. O. LIDDELL.

## No. 97.

*Sir E. Thornton to the Earl of Derby.—(Received January 23.)*

My Lord,

*Washington, January 10, 1876.*

WITH reference to my despatch of the 27th ultimo, I learn that Mr. Bliss, the United States' District Attorney at New York, yielding to the positive instructions forwarded to him by the Attorney-General, has caused a new indictment to be drawn up against Lawrence, charging him only with the crime of forgery, for which he was surrendered, *i.e.*, with forging the name of F. L. Blanding and Co. to owners' oaths and import entries. On this new indictment I understand that the case will be called up on the 12th instant.

With reference to Sir Thomas Henry's letter of the 21st ultimo, copy of which was forwarded in your Lordship's despatch of the 24th ultimo, in which it is stated that, in the discussion between me and Mr. Fish, no allusion appears to have been made to the American Act of Congress, 1848, c. 167, the 3rd section of which

\* No 87.

† No 94.

provides that the fugitive shall be surrendered to the foreign Government, to be tried for the crime of which he shall be so accused, your Lordship will have since seen by my despatch of the 13th ultimo, that on the 9th ultimo I called Mr. Fish's attention to the wording of that Act, and said that the extradition crime was the only one for which the surrendered fugitive could be tried. I then had the Act with me, and read the section to him; but both then, and on other occasions when I have made use of the same argument, Mr. Fish has maintained that neither does the Act of Congress impose upon the United States the obligation not to try the surrendered fugitive for any other than the extradition crime, nor does the Act of Parliament of 1870 impose a similar obligation upon Great Britain with regard to fugitives surrendered by the United States, because the condition is not contained in, and would be incompatible with, the Xth Article of the Treaty of 1842, and that therefore, by the 27th section of that Act, it does not apply to fugitives surrendered by Great Britain to the United States, or *vice versâ*.

From Mr. Fish's language upon this subject, I cannot but think that when, in future cases, Her Majesty's Government shall refuse to surrender, unless upon the above-mentioned condition, the Government of the United States will decline to accede to it, and that extradition will cease between the two countries. Neither do I believe that Mr. Fish would sign a new Treaty, unless Her Majesty's Government should declare that it took upon itself the whole responsibility of deciding what is or is not a political crime.

I have, &c.  
(Signed) EDWD. THORNTON.

No. 98.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, January 27, 1876.*

WITH reference to your letter of the 23rd ultimo, respecting the extradition of Charles Lawrence, I am directed by the Earl of Derby to transmit to you herewith, to be laid before Mr Secretary Cross, a copy of a despatch from Her Majesty's Minister at Washington,\* giving Mr. Fish's interpretation of the "Extradition Acts" and Treaty, but reporting at the same time that a new indictment has been drawn up against Lawrence, charging him only with the crime of forgery for which he was surrendered.

I am, &c.  
(Signed) TENTERDEN.

No. 99.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, January 27, 1876.*

I REFERRED to Her Majesty's Secretary of State for the Home Department your despatch of the 3rd instant, with reference to the trial of Charles Lawrence for any crime other than that for which he was surrendered, and I have to state to you that you cannot too strongly press upon the United States' authorities the views which have been communicated to you in my despatches on this subject.

I am, &c.  
(Signed) DERBY.

No. 100.

*Mr. Liddell to Lord Tenterden.—(Received January 31.)*

Sir,

*Whitehall, January 29, 1876.*

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of the 27th instant, forwarding a copy of a despatch from Her Majesty's Minister at



Washington in reference to the extradition of Charles Lawrence, and I am to acquaint you, for the information of the Earl of Derby, that Mr. Cross cannot express too strongly his wish that Sir Edward Thornton may be reminded to watch with the greatest care that Lawrence is tried only for the particular crime of forgery for which he was surrendered.

I am, &c.  
(Signed) A. F. O. LIDDELL.

No. 101.

*The Earl of Derby to Sir E. Thornton.*

(Telegraphic.)

*Foreign Office, January 31, 1876, 6:30 P.M.*

YOU will watch most carefully that Lawrence is only tried on the particular charge of forgery, for which he was delivered up.

No. 102.

*Sir E. Thornton to the Earl of Derby.—(Received February 18, night.)*

(Telegraphic.)

*Washington, February 18, 1876.*

IN a conversation which I had with Mr. Fish yesterday on the subject of extradition, I remarked, with reference to the case of Winslow, that before his surrender, a condition that he should only be tried for the extradition crime would probably be required by Her Majesty's Government.

Mr. Fish answered that such a condition would not be agreed to by the United States' Government; that Lawrence had been indicted for the extradition crime only, and that there was no reason for claiming such a condition. Even without the condition I am inclined to think that no attempt would be made to put Winslow on his trial for any other crime.

No. 103.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, February 19, 1876.*

I TRANSMIT to you herewith, for your information, copies of correspondence as marked in the margin,\* in regard to the case of the extradition of C. L. Lawrence, alias Gordon.

I am, &c.  
(Signed) DERBY.

No. 104.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, February 21, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a telegraphic despatch from Her Majesty's Minister at Washington,† on the subject of the terms on which the extradition of Winslow might be granted by Her Majesty's Government, if an application should be received from the United States' Government for his surrender.

I am, &c.  
(Signed) TENTERDEN.

\* Nos. 16, 17, 20, 32, 34, 35, 38, 41, 43, 45, and 54.

† No. 102.

*Mr. Liddell to Lord Tenterden.—(Received February 23.)*

Sir,

*Whitehall, February 23, 1876.*

I AM directed by Mr. Secretary Cross to transmit to you, to be laid before the Earl of Derby, the inclosed copy of a letter from Sir Thomas Henry, reporting that on the 13th instant he issued warrants under the eighth section, clause 2, of "the Extradition Act, 1870," for the apprehension of Ezra D. Winslow, who is accused of the crime of forgery within the jurisdiction of the United States of America.

I am directed to call your attention to clause 3, sub-section 2, of the Extradition Act, 1870, and to acquaint you that the Secretary of State would be glad to be informed whether any provision has been made by the law of the United States, or by arrangement, that Winslow, if surrendered, shall not, until he has been restored, or had an opportunity of returning to Her Majesty's dominions, be detained or tried in the United States for any offence committed prior to his surrender, other than the extradition crime proved by the facts on which the surrender is grounded.

After the claim set up by the United States' Government in the late case of Lawrence, of a right to try him for any crime other than the extradition crime for which he was surrendered, which is considered by Mr. Cross to amount to a denial by that Government that any such law existed at that time in the United States; and after the disclaimer by that Government of any implied arrangement existing between them and the British Government, as also the interpretation put upon the Act of Congress of August 12, 1848, cap. 167, section 3, both of which were contrary to what has always been understood to be the case; the Secretary of State fears that in the absence of any such arrangement, and if he is right in considering that no such law exists, he would have no power to order the surrender of Winslow, even though the extradition crime for which he has been arrested were proved against him, and the usual committal by the magistrate ensued thereupon.

Mr. Cross, therefore considers it his duty without further loss of time, to call attention to this difficulty, in order that Lord Derby may be in a position to bring it to the notice of the American Government at such time as he thinks most expedient, whether it be done at once, or upon receipt of a diplomatic requisition for the extradition of Winslow.

I am, &c.

(Signed) A. F. O. LIDDELL.

Inclosure in No. 105.

*Sir T. Henry to Mr. Liddell.*

Sir,

*Police Court, Bow Street, February 14, 1876.*

I HAVE the honour to report, for the information of Mr. Secretary Cross, that on the 13th instant I issued warrants under the 8th section, clause 2, of the Extradition Act 1870, for the apprehension of Ezra D. Winslow, who is accused of the crime of forgery, within the jurisdiction of the United States of America.

I beg to inclose copies of the information of Colonel Cheseborough, and certain telegrams from America, upon which the warrant was granted.

I have, &c.

(Signed) THOMAS HENRY.

No. 106.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, February 24, 1876.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 23rd instant, relative to the proposed extradition of Ezra D. Winslow, who is accused of the crime of forgery within the jurisdiction of the United States of America, and I am to state to you, in reply, that before taking into consideration the questions raised in your letter, Lord Derby would be glad to be furnished with copies of Colonel



Chesebrough's depositions in this case, together with full information as to what has passed with the United States' Legation with reference thereto.

I am, &c.  
(Signed) TENTERDEN.

No. 107.

*Mr. Liddell to Lord Tenterden.—(Received February 25.)*

Sir,

*Whitehall, February 25, 1876.*

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of yesterday's date, relative to the proposed extradition of Ezra D. Winslow, who is accused of the crime of forgery within the jurisdiction of the United States of America; and I am to transmit to you, to be laid before the Earl of Derby, the accompanying letters, with their several inclosures from Sir Thomas Henry, and to state that these documents appear to Mr. Cross to contain all the information as to what has passed between Sir Thomas Henry and the United States' Legation, but that if Lord Derby wishes any further information, Sir Thomas Henry would be requested to supply it.

I am, &c.  
(Signed) A. F. O. LIDDELL.

Inclosure 1 in No. 107.

*Sir T. Henry to Mr. Liddell, February 14, 1876.*

[See Inclosure in No. 105.]

Inclosure 2 in No. 107.

*Sir T. Henry to Mr. Liddell.*

Sir,

*February 25, 1876.*

I BEG to state that on the 12th instant Colonel Chesebrough, Second Attaché to the United States' Legation, applied to me to issue a warrant, under the 8th section of the Extradition Act of 1870, for the apprehension of Ezra D. Winslow, who is accused of the crime of forgery within the jurisdiction of the United States; a telegram was produced by Colonel Chesebrough on that day, but I did not consider it sufficient to justify me in issuing a warrant. On the 14th Colonel Chesebrough again applied to me, producing two telegrams which he had in the meantime received, one from Mr. Fish, Secretary of State, and another from the Mayor of Boston; the latter stated that the grand jury had found a true bill against Winslow for forgery, and I considered this sufficient for a warrant, which I accordingly issued and I duly informed you by letter that I had done so, and I inclosed the sworn information of Colonel Chesebrough, and the two telegrams which he had produced before me.

Winslow was apprehended, and brought to this Court on the 15th; I inclose a copy of the evidence given on that day by detective officers Dowdell and Greenham, and by Colonel Chesebrough, who requested that the prisoner be remanded for eight days.

I acceded, and the prisoner was brought before me on Wednesday last, when Colonel Chesebrough produced another telegram from Mr. Fish stating that a United States' officer had left by steamer on the 19th, and he requested another remand till the 2nd March, which I granted.

I am, &c.  
(Signed) THOMAS HENRY.

No. 108.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, February 26, 1876.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 25th instant, transmitting for his Lordship's information, certain documents relating to the apprehension, with a view to the extradition, of Ezra D. Winslow, who is accused of the crime of forgery within the jurisdiction of the United States of America; and I am now to transmit to you, to be laid before Mr. Secretary Cross, the accompanying draft of a letter\* which Lord Derby proposes, if it meets with Mr. Cross's concurrence, to address to the United States' Minister upon the subject.

I am, &amp;c.

(Signed) TENTERDEN.

No. 109.

*Sir E. Thornton to the Earl of Derby.—(Received February 29.)*

My Lord,

*Washington, February 14, 1876.*

NOTWITHSTANDING the assurances which had been given me by Mr. Fish that the forger, Charles L. Lawrence, would be tried only for the crime for which he was surrendered, I was a little anxious upon the subject, and therefore requested Mr. Archibald to procure me a copy of the last indictment which has been drawn up against the accused. This document is now in my possession. It is, however, somewhat difficult for me to decide whether this indictment goes beyond the crime or crimes for which Lawrence was surrendered, because I have never received an official intimation of the precise crimes for which he was so surrendered, nor copies of the documents which led to his committal, nor have I seen copies of the correspondence which may have passed upon the subject between Her Majesty's Government and the United States' Minister in London. All the documents which I have seen, and which have enabled me to form an opinion, are copies, furnished by Mr. Stoughton, counsel for the defendant, of two warrants, purporting to be signed by Sir Thomas Henry, dated April 15th, 1875. In one of these Lawrence is stated to be accused of the crime of forging and uttering a certain affidavit, purporting to be made and sworn by one F. L. Blanding, with intent to defraud the Government of the United States; in the other, of the crime of forging and uttering a certain bond and writing obligatory, with intent, &c.

From the indictment I am led to suppose that the above-mentioned affidavit is an affidavit, partly printed and partly written, on the back of an import entry. In it F. L. Blanding swears that the entry contains a just and true account of all the goods, &c., imported by and consigned to F. L. Blanding and Co., in the "Baltic." The bond mentioned in the other warrant seems to be one which is signed by Lawrence as attorney for Blanding, and by Lawrence for himself.

There are twenty-four counts in the indictment. The greater part of them charge the accused with forging and uttering the above-mentioned affidavit and bond, and, as far as they relate to these two documents, I can see nothing to which objection can be taken.

But the 7th, 8th, 10th, 17th, 18th, and 20th counts charged the defendant with forging and uttering the import entry alone, without mention of the affidavit which is on the back of it. It seemed to me that these counts indicted him for a crime which was not mentioned in either of the two warrants.

I submitted the indictment to Mr. Carlisle, the legal adviser of this Legation, who, whilst he expressed his opinion in the strongest manner that the accused could not be tried for any but the crime for which he was surrendered, added that the indictment was clearly one for the offences specified in the warrants, and that he saw no possible objection to it which could be set up or maintained by Her Majesty's Government. He considered the gist of the matter to be that, in accordance with the provisions of the Treaty, a man had been given up by the British authorities who was charged with the commission of the crime of forgery, and that this was an indictment for forgery, and, substantially, for exactly the forgery specified in the warrants. Mr. Carlisle saw nothing in the objection that the warrants specified the forgery of an



affidavit and bond, whilst some of the counts in the indictment charge the forgery of a paper which is neither.

The day after Mr. Carlisle gave me this opinion I met Mr. Stoughton, who was passing through Washington. He insisted that the counts of the indictment which I have cited above charged Lawrence with a crime different from those for which he was surrendered. I again submitted the document to Mr. Carlisle, with Mr. Stoughton's objection, but Mr. Carlisle maintained his previous opinion, said that these counts substantially charged the prisoner with the same crime, and that the objection was a mere technical one. He added that, however fully justified Her Majesty's Government might be in resisting Lawrence's being tried for any but the extradition crime, it was not worth its while to make a technical objection of that nature to the indictment. He said, however, that, without the whole of the papers before him, he could not give a more positive opinion.

Considering Mr. Carlisle's view of the matter, I shall refrain, for the present at least, and unless some new circumstances should induce me to act otherwise, from making a representation to Mr. Fish with regard to the indictment; but, in the meantime, if it be possible, I should feel much obliged if your Lordship could direct that copies of the papers on which the committal of Lawrence was decided, as well as of General Schenck's correspondence with Her Majesty's Government, would be transmitted to me.

I have, &c.  
(Signed) EDWD. THORNTON.

No. 110.

*Mr. Liddell to Lord Tenterden.—(Received February 29.)*

Sir, *Whitehall, February 28, 1876.*

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of the 26th instant, and to acquaint you that he concurs in the letter which the Earl of Derby proposes to address to the United States' Minister at this Court, on the subject of the apprehension, with a view to extradition, of Ezra D. Winslow, who is accused of forgery within the jurisdiction of the United States of America, the draft of which is herewith returned in accordance with your request.\*

I am, &c.  
(Signed) A. F. O. LIDDELL.

No. 111.

*Lord Tenterden to Mr. Liddell.*

Sir, *Foreign Office, February 29, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a despatch from Her Majesty's Minister at Washington on the subject of the extradition of C. L. Lawrence.†

I am, &c.  
(Signed) TENTERDEN.

No. 112.

*The Earl of Derby to General Schenck.*

Sir, *Foreign Office, February 29, 1876.*

I HAVE the honour to state to you that I have been informed by Her Majesty's Secretary of State for the Home Department that the Chief Magistrate of the Bow Street Police Court issued on the 13th instant, upon the information of Colonel Cheseborough, of the United States' Legation, warrants for the apprehension, under the 8th section, clause 2, of the Extradition Act, 1870, of Ezra D. Winslow, who is accused of the crime of forgery within the jurisdiction of the United States of America.

\* No. 112.

† No. 109.

Her Majesty's Secretary of State for the Home Department, in communicating this to me, has drawn my attention to the 3rd clause, sub-section 2 of the Act, which is as follows :—

“(2.) A fugitive criminal shall not be surrendered to a foreign state unless provision is made by the law of that state, or by arrangement that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign State for any offence committed prior to his surrender, other than the extradition crime proved by the facts on which the surrender is grounded.”

And he has inquired whether any provision has been made by the law of the United States, or by arrangement, that Winslow, if surrendered, shall not, until he has been restored, or had an opportunity of returning to Her Majesty's dominions, be detained or tried in the United States for any offence committed prior to his surrender, other than the extradition crime proved by the facts on which the surrender is grounded.

The Secretary of State for the Home Department fears that the claim advanced by your Government to try Lawrence, in the recent case of extradition with which you are familiar, for crimes other than the extradition crime for which he was surrendered, amounts to a denial that any such law exists in the United States ; while the disclaimer by your Government of any implied understanding existing with Her Majesty's Government in this respect, and the interpretation put upon the Act of Congress of August 12, 1848, cap. 167, sec. 3., preclude any longer the belief in the existence of an effective arrangement which Her Majesty's Government had previously supposed to be practically in force.

The Secretary of State for the Home Department is accordingly compelled to state that if he is correct in considering that no such law exists, he would have no power, in the absence of an arrangement, to order the extradition of Winslow, even though the extradition crime for which he has been arrested were proved against him, and the usual committal by the magistrate ensued thereupon.

I have thought it right to lose as little time as possible in calling your attention to the intimation which I have thus received from Her Majesty's Secretary of State for the Home Department ; and I have the honour to request that you will bring the circumstances to the knowledge of your Government, in order that means may be found for the solution of the present difficulty.

I am, &c.  
(Signed) DERBY.

No. 113.

*General Schenck to the Earl of Derby.—(Received March 2.)*

My Lord,

*Legation of the United States, London, March 1, 1876.*

ONE Ezra D. Winslow, a citizen of the United States, has been arrested in London on a charge of forgery committed in Boston. An officer has arrived from that city bringing the necessary documents and proofs upon which to ask for the extradition of Winslow. Under instructions from Mr. Fish, and pursuant to the Xth Article of the Treaty of 1842 between the United States and Great Britain, I have the honour to apply to Her Majesty's Government for the delivery of Winslow into the custody of Mr. Albion J. Dearborn, the officer sent here to receive him, so soon as he shall have been committed for extradition.

I have, &c.  
(Signed) ROBT. C. SCHENCK.

No. 114.

*General Schenck to the Earl of Derby.—(Received March 2.)*

My Lord,

*Legation of the United States, London, March 2, 1876.*

WITH reference to my note of yesterday, asking that E. D. Winslow, a fugitive from justice, may be surrendered on the charge of forgery, I have now to state that in addition to that crime he is charged with that “utterance of forged paper,” and I beg,



therefore, to request his extradition on the two distinct charges, viz., of forgery and the utterance of forged paper.

I have, &c.  
(Signed) ROBT. C. SCHENCK.

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No. 115.

*General Schenck to the Earl of Derby.—(Received March 2.)*

My Lord,

*Legation of the United States, London, March 2, 1876.*

I HAVE the honour to acknowledge the receipt of your note of the 29th of February, in reference to the case of Winslow. It was delivered to me last evening, after I had sent to you my note of yesterday upon the same subject. I shall lose no time in bringing the subject of your Lordship's communication to the attention of my Government.

I have, &c.  
(Signed) ROBT. C. SCHENCK.

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No. 116.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, March 2, 1876.*

WITH reference to your letter of the 28th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a note which has now been received from the United States' Minister at this Court,\* applying for the extradition of Ezra D. Winslow.

I am, &c.  
(Signed) TENTERDEN.

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No. 117.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, March 2, 1876.*

WITH reference to my letter of this day's date, I am directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a further note from the United States' Minister at this Court,† requesting that the extradition of Ezra Winslow may be granted on the charge of the utterance of forged paper, as well as of forgery.

I am, &c.  
(Signed) TENTERDEN.

P.S.—I am also to inclose a copy of a further note from General Schenck on this subject.‡

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No. 118.

*Mr. Liddell to Lord Tenterden.—(Received March 3.)*

Sir,

*Whitehall, March 2, 1876.*

WITH reference to your letter of this day's date and the requisition of General Schenck inclosed, asking for the delivery of Ezra D. Winslow into the custody of Mr. A. P. Dearborn, the officer of the United States sent here to receive him, I am directed by Mr. Secretary Cross to acquaint you that he has been informed by the Chief Magistrate of the Bow Street Police Court, that the requisite proofs having been laid before him of the crime of forgery having been committed by Winslow in the jurisdiction of the United States of America, and that he intends formally to commit

\* No. 113.

† No. 114.

‡ No. 115.

him to prison to-morrow to await the further orders of the Secretary of State . . . . The Secretary of State has forwarded to the Chief Magistrate his Order under Section 8 of the Extradition Act 1870, signifying that a requisition has been made for the surrender of the prisoner. The Chief Magistrate will, upon the committal being completed, send to the Secretary of State a certificate of such committal and his report upon the case. Nothing would then remain to be done but for the Secretary of State, at the expiration of fifteen days prescribed in the 11th Section of the Act of 1870, to issue his warrant for the prisoner to be surrendered to the person duly authorized to receive him.

Mr. Cross having, in my letter of the 23rd ultimo, drawn the attention of the Earl of Derby to the difficulty created in consequence of what has lately occurred in the case of Lawrence, and the positive enactment of section 3, sub-section 2 of the Extradition Act of 1870, requests that his Lordship may be moved to signify to the American Government that Mr. Cross will not issue his warrant for the surrender of Winslow until he has been informed by Lord Derby, either that provision has been made by the law of the United States or by arrangement, that Winslow shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in the United States for any offence committed prior to his surrender, other than the extradition crimes proved by the facts on which the surrender would be granted.

I am, &c.  
(Signed) A. F. O. LIDDELL.

No. 119.

*Mr. Liddell to Lord Tenterden.—(Received March 3.)*

Sir,

*Whitehall, March 2, 1876.*

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of the 29th ultimo, forwarding a copy of a despatch from Her Majesty's Minister at Washington, relative to the extradition of Charles Lewis Lawrence, and requesting to be furnished with copies of certain documents in connection with the case; and in reply I am to transmit to you, to be laid before the Earl of Derby, the accompanying copies of Sir Thomas Henry's warrants of committal, and of the warrant of the Secretary of State for the surrender of Lawrence; and to acquaint you, for his Lordship's information, that so far as the Secretary of State can judge from Sir Edward Thornton's letter, he is of opinion that Mr. Carlisle's view is correct. No documents beyond the copies of the warrants inclosed exist in the Home Office which would throw any further light on this case.

The original American warrant and depositions were returned to the Foreign Office on the 17th April, 1875, in the letter intimating that Sir Thomas Henry had committed Lawrence; and the Foreign Office have the originals of all communications made by General Schenck in the case.

I am, &c.  
(Signed) A. F. O. LIDDELL.

Inclosure in No. 119.

*Warrant.*

POLICE COURT, BOW STREET.

Metropolitan Police District, to wit.

To George Church, one of the Constables of the Metropolitan Police Force, and to the Keeper of the Middlesex House of Detention at Clerkenwell, in the County of Middlesex, and within the said district.

BE it remembered, that on this 15th day of April, in the year of our Lord 1875, Charles Lewis Lawrence, late of New York, is brought before me, Sir Thomas Henry, Knight, the Chief Magistrate of the Metropolitan Police Courts, sitting at the Police Court in Bow Street, within the Metropolitan Police District, to show cause why he



should not be surrendered, in pursuance of the "Extradition Acts, 1870 and 1873," on the ground of his being accused of the commission of the crime of \* forging and uttering a certain affidavit purporting to be made and sworn by one F. L. Blanding, with intent to defraud the Government of the United States, within the jurisdiction of the United States of America, and forasmuch as no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Acts:

This is therefore to command you the said constable, in Her Majesty's name, forthwith to convey and deliver the body of the said Charles Lewis Lawrence into the custody of the said keeper of the said House of Detention at Clerkenwell; and you the said keeper to receive the said Charles Lewis Lawrence into your custody, and him there safely to keep until he is thence delivered, pursuant to the provisions of the said Extradition Acts, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the Police Courts of the Metropolis, this 15th day of April, 1875.

(L.S.)

(Signed)

THOMAS HENRY.

## No. 120.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, March 4, 1876.*

I TRANSMIT to you herewith, for your information, copies of correspondence on the subject of the extradition of C. L. Lawrence.†

I am, &c.  
(Signed) DERBY.

## No. 121.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, March 4, 1876.*

I TRANSMIT to you herewith, for your information, copies of correspondence on the subject of the extradition of Ezra D. Winslow.‡

I am, &c.  
(Signed) DERBY.

## No. 122.

*Sir E. Thornton to the Earl of Derby.—(Received March 5.)*

(Extract.)

*Washington, February 21, 1876.*

DURING an interview with Mr. Fish on the 17th instant I took occasion to refer to the case of Winslow, accused of forgery, and recently arrested in London, whose extradition the United States' Government is about to ask, and I expressed my belief that Her Majesty's Government would not consent to his surrender, except on the condition that he should be tried only for the crimes for which he might be committed. Mr. Fish replied that the United States' Government would not consent to such a condition; that it was not fair to ask it; and that the forger Lawrence had not been indicted for any but the crime for which he had been surrendered. I said that I had a copy of the indictment against Lawrence, and that it appeared to me to go a little beyond the particular crime for which Lawrence was surrendered. I had, however, been unwilling to make an official representation to him upon the subject, because that part of the indictment which seemed to go beyond the extradition crimes was still so immediately connected with them, as to be substantially a part of the same crimes. Mr. Fish replied that the most positive instructions had been given that Lawrence was, for the present, to be tried only for the crimes for which he was surrendered.

I am inclined to think that, since the discussion which has taken place upon this subject, the United States' Government, even though it should refuse to consent to the

\* In the other warrant "forging and uttering a certain bond and writing obligatory with intent," &c.

† Nos. 118 and 119.

‡ Nos. 110, 111, 113, 114, and 115.

above-mentioned condition, and Her Majesty's Government were to surrender Winslow without it, would not attempt to try Lawrence, Winslow, or any one else in a similar position, for any but the crime for which he might be surrendered. I am convinced that the President and the Attorney-General are both convinced that he ought not to be tried for any other crime.

No. 123.

*Mr. Liddell to Lord Tenterden.—(Received March 6.)*

Sir,

*Whitehall, March 4, 1876.*

WITH reference to your letters of the 2nd instant, I am directed by the Secretary of State for the Home Department to acquaint you, for the information of the Secretary of State for Foreign Affairs, that Ezra Dyer Winslow, whose extradition is claimed by the United States' Government for the crimes of forgery and uttering forged paper, was committed by the Presiding Magistrate at the Bow Street Police Court, on the 3rd instant, to the Middlesex House of Detention at Clerkenwell.

The depositions and other documents in the case are returned herewith, and also a copy of the two warrants issued by Sir Thomas Henry, and of the deposition of the police officer from Boston.

I am, &c.

(Signed) A. F. O. LIDDELL.

Inclosure in No. 123.

*Warrants.*

POLICE COURT, BOW STREET.

Metropolitan Police District, to wit.

To George Church, one of the Constables of the Metropolitan Police Force, and to the Keeper of the Middlesex House of Detention at Clerkenwell, in the County of Middlesex, and within the said District.

BE it remembered that on this 3rd day of March, in the year of our Lord 1876, Ezra Dyer Winslow, late of Boston, United States, is brought before me, Sir Thomas Henry, Knight, the Chief Magistrate of the Metropolitan Police Courts, sitting at the Police Court in Bow Street, within the Metropolitan Police District, to show cause why he should not be surrendered in pursuance of "The Extradition Act, 1870," on the ground of his being accused of the commission of the crime of utterance of forged paper (that is to say, of uttering the several promissory notes set forth and described in the bill of indictment which was found by the jury of the County of Suffolk, Massachusetts, on the 1st day of February last, and which was produced before me on the 2nd day of March instant, duly authenticated) within the jurisdiction of the United States of America, and forasmuch as no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Act:

This is therefore to command you the said constable, in Her Majesty's name, forthwith to convey and deliver the body of the said Ezra Dyer Winslow into the custody of the said Keeper of the said House of Detention at Clerkenwell, and you the said Keeper to receive the said Ezra Dyer Winslow into your custody, and him there safely to keep until he is thence delivered, pursuant to the provisions of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the Police Courts of the Metropolis, this 3rd day of March, 1876.

(L.S.)

(Signed)

THOMAS HENRY.



## POLICE COURT, BOW STREET.

Metropolitan Police District, to wit.

To George Church, one of the Constables of the Metropolitan Police Force, and to the Keeper of the Middlesex House of Detention at Clerkenwell, in the County of Middlesex, and within the said district.

Be it remembered, that on this 3rd day of March, in the year of our Lord 1876, Ezra Dyer Winslow, late of Boston, United States, is brought before me, Sir Thomas Henry, Knight, the Chief Magistrate of the Metropolitan Police Courts, sitting at the Police Court in Bow Street, within the Metropolitan Police District, to show cause why he should not be surrendered in pursuance of the "Extradition Act, 1870," on the ground of his being accused of the commission of the crime of forgery (that is to say, of forging the several promissory notes set forth and described in the bill of indictment which was found by the Jury of the County of Suffolk, Massachusetts, on the 1st day of February last, and which was produced before me on the 2nd day of March instant duly authenticated) within the jurisdiction of the United States of America, and forasmuch as no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Act:

This is therefore to command you the said Constable, in Her Majesty's name, forthwith to convey and deliver the body of the said Ezra Dyer Winslow into the custody of the said Keeper of the said House of Detention at Clerkenwell; and you the said Keeper to receive the said Ezra Dyer Winslow into your custody, and him there safely to keep until he is thence delivered, pursuant to the provisions of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the Police Courts of the Metropolis, this 3rd day of March, 1876.

(L.S.)

(Signed)

THOMAS HENRY.

No. 124.

*Sir E. Thornton to the Earl of Derby.—(Received March 6.)*

(Telegraphic.)

*Washington, March 5, 1876.*

MR. FISH told me in a conversation which I had with him to-day, that you required a condition that, if surrendered, Winslow should be tried only for the extradition crimes. The United States' Government, he added, would not agree to such a condition, and would rather declare the Extradition Article of the Treaty at an end; but he said that Winslow, if surrendered, would be tried for the extradition crimes only. He said, however, when I asked him, that he did not know whether the same would be the case with regard to Lawrence.

No. 125.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, March 6, 1876.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 2nd instant, relative to the case of Ezra D. Winslow, accused of the crime of forgery within the jurisdiction of the United States of America, whose extradition is requested by the American Government, and I am now to transmit to you, to be laid before Mr. Secretary Cross, the accompanying draft of a note which Lord Derby proposes, if it meets with Mr. Cross's concurrence, to address to the United States' Chargé d'Affaires upon the subject.\*

I am, &c.

(Signed)

TENTERDEN.

No. 126:

*Mr. Liddell to Lord Tenterden.—(Received March 7.)*

Sir,

*Whitehall, March 7, 1876.*

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of yesterday's date, and to request that you will inform Lord Derby that Mr. Cross concurs in the draft of a note which his Lordship proposes to address to the United States' Charge d'Affaires relative to the case of Ezra D. Winslow,\* whose extradition is claimed by the American Government for the crime of forgery within the jurisdiction of the United States of America, a copy of which accompanied your letter.

I am, &amp;c.

(Signed) A. F. O. LIDDELL.

No. 127.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, March 7, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a telegraphic despatch from Her Majesty's Minister at Washington in regard to the extradition of Ezra D. Winslow.†

I am, &amp;c.

(Signed) TENTERDEN.

No. 128.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, March 7, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, an extract from a despatch from Her Majesty's Minister at Washington on the subject of the extradition of Ezra D. Winslow.‡

I am, &amp;c.

(Signed) TENTERDEN.

No. 129.

*Mr. Liddell to Lord Tenterden.—(Received March 8.)*

Sir,

*Whitehall, March 8, 1876.*

WITH reference to your letter of yesterday's date, forwarding a copy of a telegraphic despatch from Her Majesty's Minister at Washington in regard to the extradition of Ezra D. Winslow, I am directed by Mr. Secretary Cross to acquaint you, for the information of the Earl of Derby, that he regrets very much that any doubt should have been thrown upon the implied arrangement which has always hitherto been supposed in England to have existed between England and America; but as doubts have been raised as to the existence of such an understanding, and a construction has been placed upon the American law different from that which it was in England understood to bear, he cannot accept a mere verbal statement in conversation as an arrangement such as is contemplated by section 3, sub-section 2, of the Extradition Act, 1870. If, however, If, however, Mr. Fish will instruct the United States' Minister at this Court, in such way as he may think best, to the effect that Winslow shall only be tried in the United States for the extradition crime for which his surrender is claimed here, Mr. Cross would issue his warrant for the surrender of the prisoner. But though he is willing to act upon such a special arrangement in this case, in order to show every wish on the part of the English Government to act in harmony with the United States Government in carrying out the Treaty and the Act of 1870, he must especially guard himself from being supposed for one moment to waive the point which the English Government has

\* No. 130.

† No. 124.

‡ No. 122.



hitherto taken in all the correspondence which has passed between the two countries in the case of Lawrence; and he would strongly press upon the Government of the United States the advantage to both countries to be gained by the old practice being continued which is therein referred to.

I am, &c.  
(Signed) A. F. O. LIDDELL.

No. 130.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, March 8, 1876.*

I REFERRED to Her Majesty's Secretary of State for the Home Department General Schenck's notes of the 1st and 2nd instant, applying for the surrender to the United States' officer authorized to receive him of Ezra D. Winslow, charged with having committed certain crimes within the jurisdiction of the United States of America; and I have the honour to inform you that, the requisite proofs having been laid before him, the Chief Magistrate of the Bow Street Police Court has formally committed Winslow to prison, and Mr. Cross has forwarded to Sir Thomas Henry his order, under section 8 of the Extradition Act of 1870, signifying that a requisition has been made for the surrender of the prisoner.

The Chief Magistrate will, upon the committal being completed, forward to Mr. Cross a certificate of such committal, together with his report upon the case, and nothing would, in the ordinary course of things, remain but for Her Majesty's Secretary of State for the Home Department, at the expiration of the fifteen days prescribed in the 11th section of the Act of 1870, to issue his warrant for Winslow to be surrendered to the person duly authorized to receive him.

But in view of the difficulty created in consequence of what has recently occurred in the case of Lawrence, as well as the positive enactment of section 3, sub-section 2, of the Extradition Act of 1870, quoted in the second paragraph of my note to General Schenck of the 29th ultimo, Her Majesty's Government do not feel themselves justified in authorizing the surrender of Winslow until they shall have received the assurance of your Government that this person shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in the United States for any offence committed prior to his surrender other than the extradition crimes proved by the facts on which the surrender would be grounded, and I have the honour to request that you will communicate this decision to your Government, in order that some arrangement may be come to in the matter.

I am, &c.  
(Signed) DERBY.

No. 131.

*Colonel Hoffman to the Earl of Derby.--(Received March 8.)*

My Lord,

*Legation of the United States, London, March 8, 1876.*

REFERRING to your note to General Schenck of February 29, upon the subject of the extradition of Winslow, in which you state that the Secretary of State for the Home Department may come to the conclusion that he has no power to surrender the fugitive, even though the usual committal by the Magistrate should take place, I have the honour to inform you that I have received a communication from my Government upon this subject.

Mr. Fish states, not having then received a copy of your Lordship's note, but only by a telegram from General Schenck, that he is at a loss to understand upon what ground the possible action of Her Majesty's Government, as foreshadowed in that communication, is based. If it is founded on a desire to make the Extradition Treaty of 1842 between the United States and Great Britain subject to the Extradition Act of 1870, he is unable to find anything in that Treaty which admits the right of either party to exact conditions beyond those expressed in the Treaty. If, on the other hand, it is based, as I infer from your Lordship's note, upon the reported action of my Government in the Lawrence case, I am authorized by Mr. Fish to say that at the date of his despatch Lawrence had not been arraigned for any other crime than the

extradition crime, and that no representation had been made to my Government upon this subject.

In your Lordship's note you refer to the clause of the Act of 1870 which forbids the surrender of a fugitive criminal, unless provision is made by law, or by arrangement, that he shall be tried only for the extradition crime proved by the facts upon which the surrender is grounded.

But may I be permitted to call your Lordship's attention to the 27th section of the same Act (33 & 34 Vict., cap. 53) repealing the former Acts under which extradition had theretofore been accorded? This section, probably suggested by the Foreign Office, excepts anything contained in the Act inconsistent with the Treaties referred to in the repealed Acts, among which Treaties is that with the United States. And I am enabled to call your Lordship's attention to a case in the Court of the Queen's Bench, *ex parte* Bouvier, in which it was argued by the Attorney-General, in reference to this section, that the intention of Parliament was to make a general Act which should apply to all cases, except where there was anything inconsistent with the Treaties referred to, and that the provision limiting the crime for which the trial might be had, being inconsistent with the Treaty, the condition so imposed did not apply to the Treaty. And the Lord Chief Justice (Cockburn) further observed:—"I rather hesitate to express a decided opinion as to the construction to be put upon the 27th section, although I see plainly what was the intention of the Legislature, that is to say, it was intended, while getting rid of the Statutes by which the Treaties were confirmed, to save the existing Treaties in their full integrity and force."

The "full integrity and force" of the Treaty of Extradition between the United States and Great Britain has been clearly shown and settled by an unbroken operation of nearly thirty years, during which time Great Britain has at least upon one occasion tried surrendered criminals for crimes other than those for which they had been surrendered, and has thus afforded a practical construction of the scope of the Treaty, and of the powers and rights of both Governments.

I sincerely hope that Her Majesty's Government, upon a further consideration of this matter, will be able to hold with that eminent jurist, the Lord Chief Justice, that "the desire of the Legislature to save the Treaties in their full integrity and force," has been effected; and that they will decide, as he states that he should have done, had it been necessary, "that this object has been accomplished." I know that Her Majesty's Government is as anxious as we are that criminals should not escape the just punishment of their crimes by taking refuge on a foreign shore; and it would assuredly be a sad thing for the interests of both countries, and in that of humanity, if a Treaty which has worked so well for nearly thirty-five years, to our mutual advantage, and to the furtherance of justice, should now be permitted to fall to the ground, and great criminals, on both sides of the Atlantic, be thus enabled to escape "unwhipt of justice."

I have, &c.

(Signed) WICKHAM HOFFMAN.

No. 132.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, March 11, 1876.*

I TRANSMIT to you herewith, for your instruction, copies of correspondence, on the subject of the extradition of Ezra D. Winslow.\*

I am, &c.

(Signed) DERBY.

No. 133.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, March 11, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, the accompanying copy of a note from the United States' Chargé d'Affaires at this Court,† relative to the case of Winslow; and I am to state to you, for

\* Nos. 123, 129, 130, and 131.

† No. 131.



the information of Mr. Cross, that his Lordship has deferred acting on your letter of the 8th instant on this subject until he shall have been favoured with Mr. Cross observations on Colonel Hoffman's note now transmitted.

I am, &c.  
(Signed) TENTERDEN.

No. 134.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, March 11, 1876.*

I HAVE the honour to acknowledge the receipt of your note of the 8th instant, containing further observations on the case of Winslow; and I have to state to you, in reply, that the note in question shall be considered.

I am, &c.  
(Signed) DERBY.

No. 135.

*Colonel Hoffman to the Earl of Derby.—(Received March 22.)*

My Lord,

*Legation of the United States, London, March 22, 1876.*

ONE Charles J. Brent, a fugitive from justice, has been arrested in England charged with committing forgery and uttering forged paper in the State of Kentucky of the United States. He will be brought up before the sitting Magistrate in Bow Street on Saturday next.

I am instructed by Mr. Fish to request, pursuant to the stipulations of the Xth Article of the Treaty of 1842, between the United States and Great Britain, that Brent may be delivered up on the charge of forgery and the utterance of forged paper, and placed in the custody of Mr. James E. Wilkinson, who is provided with the President's warrant to receive him.

I have the honour to forward to your Lordship herewith the papers upon which extradition is asked.

I have, &c.  
(Signed) WICKHAM HOFFMAN.

No. 136.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, March 22, 1876.*

I AM directed by Her Majesty's Secretary of State for Foreign Affairs to transmit to you a copy of a letter, from the United States' Chargé d'Affaires at this Court,\* applying on the grounds stated in the accompanying papers, for the extradition of Charles J. Brent; and I am to request you to move Her Majesty's Secretary of State for the Home Department to take such steps in this matter as may be right and proper, and to inform Lord Derby thereof.

I am, &c.  
(Signed) TENTERDEN.

No. 137.

*Mr. Liddell to Lord Tenterden.—(Received March 25.)*

Sir,

*Whitehall, March 23, 1876.*

I AM directed by the Secretary of State for the Home Department to acknowledge the receipt of your letter of the 22nd instant, forwarding an application from the United States' Chargé d'Affaires at this Court for the extradition of Charles J. Brent,

accused of the crimes of forgery and the utterance of forged paper within the jurisdiction of the United States of America, and I am to acquaint you, in reply, for the information of the Secretary of State for Foreign Affairs, that Mr. Secretary Cross has issued an Order under his hand and seal, requiring the Chief Magistrate of the Metropolitan Police Courts, or other Magistrate of the Metropolitan Police Court, in Bow Street, to proceed in the case in conformity with the provisions of the Extradition Acts of 1870 and 1873.

I am, &c.  
(Signed) A. F. O. LIDDELL.

No. 138.

*Mr. Everest to Lord Tenterden.—(Received March 25.)*

My Lord,

*Whitehall, March 25, 1876.*

MR. SECRETARY CROSS having had before him your letter of the 11th instant, respecting the case of Ezra D. Winslow, I am directed to state in reply, for the information of the Earl of Derby, that Mr. Cross has nothing to add to his former letters. He is anxious as the United States' Government that criminals should not escape the just punishment of their crimes by taking refuge on a foreign shore, and the advantage to both States from a common action is equal; but he feels sure that no Government would so strongly and properly object to anyone who had sought an asylum in the United States being delivered up for an offence of a purely criminal character, and afterwards being tried in England for a wholly different offence, or for one of a political character, as the United States themselves. Mr. Cross is only anxious that the terms of the Act of 1870, which actually bind his hands, should be so far complied with in this, or in any other case, that he may be in a condition to comply with the request of the United States' Government, and to render that assistance to them in the punishment of fugitive criminals which is so absolutely for the good of both countries alike.

There can be no question of taking advantage of either Government by the other in any case, their interests being wholly identical.

I am, &c.  
(For the Under-Secretary of State),  
(Signed) G. EVEREST.

No. 139.

*Sir E. Thornton to the Earl of Derby.—(Received March 27.)*

My Lord,

*Washington, March 13, 1876.*

WITH reference to my despatch of the 14th ultimo, I have now the honour to inclose a pamphlet containing copies of certain documents relative to the last indictment preferred against the forger Lawrence.

Your Lordship will perceive that, on the 26th ultimo, Lawrence, by advice of his counsel, put forward a plea that the indictment showed an intention to try him for crimes other than those for which he was surrendered by Her Majesty's Government.

On the 1st instant, the District-Attorney of the United States, Mr. Bliss, filed a reply to the appeal of Lawrence; on the 4th instant, Lawrence made a rejoinder to this reply, and, finally, Mr. Bliss, on the 7th instant, entered a demurrer to the defendant's rejoinder. It would appear, therefore, that it is now left to the Court to decide:—

1. Whether the indictment charges the accused with crimes other than those for which he was surrendered; and

2. Whether, if it does so, the prisoner may be tried for such crimes.

Although I feel some hesitation in offering my opinion upon these points, it seems to me that the first point is one upon which the Court might naturally decide; but that the second question, which depends principally upon the interpretation of a Treaty stipulation, is within the province of the Government of the United States. Upon this last point there might be a ground for addressing a note to the United States Government, and for discussing the whole question.

I would, at the same time, refer your Lordship to page 13 of the inclosed



pamphlet, where are found statements made by the District-Attorney in reply to Lawrence's plea, which, as coming from the representative of the United States' Government, is charged with the prosecution in its name, would also furnish ground for addressing a communication to that Government.

I am inclined, however, to await the decision of the Court upon the two points, and to be guided by the nature of that decision as to whether I should address a note to Mr. Fish upon the subject. If, however, your Lordship should be of opinion that this step had better be taken at once, I would suggest the expediency of your Lordship instructing me to do so by telegraph. It may be that circumstances may arise even before the despatch shall reach your Lordship, which may render it advisable that I should not delay in addressing Mr. Fish with regard to the question at issue.

I am unable to forward to your Lordship more than one copy of the inclosed pamphlet, but I am requesting Mr. Archibald to endeavour to obtain some more copies, and to forward them by the same steamer.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure in No. 139.

*Plea, Replication, Rejoinder, and Demurrer in the case of the United States against Charles L. Lawrence.*

No. 140.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, March 29, 1876.*

WITH reference to my letter of the 29th ultimo I am directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a despatch from Her Majesty's Minister at Washington,\* inclosing a pamphlet containing copies of certain documents relative to the last indictment preferred against C. L. Lawrence, and requesting instructions as to whether he should address a note to Mr. Fish upon the subject

I am, &c.  
(Signed) TENTERDEN.

No. 141.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, March 29, 1876.*

I REFERRED to Her Majesty's Secretary of State for the Home Department your note of the 22nd instant, applying for the extradition of Charles J. Brent, accused of the crimes of forgery and the utterance of forged paper within the jurisdiction of the United States of America, and I have the honour to state to you that I have been informed in reply that Mr. Secretary Cross has issued an order under his hand and seal requiring the Chief Magistrate of the Metropolitan Police Courts, or other magistrate of the Metropolitan Police Court in Bow Street, to proceed in the case in conformity with the provisions of the Extradition Acts of 1870 and 1873.

I am, &c.  
(Signed) DERBY.

No. 142.

*The Earl of Derby to Sir E. Thornton.*

(Telegraphic.)

*Foreign Office, March 30, 1876.*

THE following telegram was published in the "Daily News" of the 29th:—  
"The United States' District Court of New York has decided that the forger

\* No. 139.

Lawrence, who was brought from England under the Extradition Treaty, can be tried for other offences besides those mentioned in the warrant. The Court cannot regard the order of the President to the contrary, or take notice of any agreement between the English and American Governments to that effect."

Is the report of the proceedings of the District Court given in this telegram correct?

No. 143.

*Sir E. Thornton to the Earl of Derby.—(Received March 30, at night.)*

(Telegraphic.)

*Washington, March 30, 1876.*

THE report in the "Daily News" is substantially correct.

No. 144.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, March 31, 1876.*

WITH reference to your letter of the 25th instant, relative to the case of Ezra D. Winslow, whose extradition is requested by the United States' Government, I am directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, for his information, the accompanying copy of a telegram upon the subject, which was sent to Her Majesty's Minister at Washington, together with a copy of his reply.\*

I am, &c.  
(Signed) TENTERDEN.

No. 145.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, April 1, 1876.*

WITH reference to your despatch of the 13th ultimo, I transmit to you herewith, for your information, a copy of a letter from the Home Office,† in regard to the extradition of C. L. Lawrence.

I am, &c.  
(Signed) DERBY.

No. 146.

*Sir H. Selwin-Ibbetson to Lord Tenterden.—(Received April 1.)*

Sir,

*Whitehall, April 1, 1876.*

I HAVE laid before Mr. Secretary Cross your letter of the 29th ultimo, with its inclosures, respecting the case of Charles L. Lawrence, who has been surrendered to the United States' Government under the American Extradition Treaty.

Mr. Cross desires me to state, for the information of the Earl of Derby, that he has nothing to add to the views which he has expressed in former correspondence on this subject; and that in his opinion Sir Edward Thornton should be instructed, with special reference to the letter of the Attorney-General of the United States, a copy of which appears at page 7 of the printed document which accompanied your letter, to press those views as strongly as possible on the American authorities.

I am, &c.  
(Signed) H. SELWIN-IBBETSON.

\* Nos. 142 and 143.

† No. 146.



No. 147.

*Mr. Everest to Lord Tenterden,—(Received April 8.)*

Sir,

Whitehall, April 8, 1876.

HAVING laid before Mr. Secretary Cross your letter of the 31st ultimo, I am directed to state in reply that the telegram from Sir E. Thornton confirms the report that the United States "District Court of New York has decided that the forger Lawrence can be tried for other offences besides those mentioned in the warrant, and the Court cannot regard the order of the President to the contrary, or take notice of any agreement between the English and American Governments to that effect."

Mr. Cross would, therefore, suggest, for Lord Derby's consideration, that the attention of the United States' Chargé d'Affaires should be called to the above decision, and that inquiry should be made whether the District Court has the power to carry out that decision; if it has, it would be nugatory to enter into any arrangement.

In this country the Attorney-General could enter a *nolle prosequi*, and so put a stop to further proceedings in any prosecution; but Mr. Cross is not aware whether the Attorney-General of the United States has similar power. The language of the District Court leads Mr. Cross to think he has not, and if so, he can see no solution of the difficulty except a new Treaty, and an Act of Congress, which would recognize the acknowledged principle of extradition law that a fugitive can only be tried for the crime, or crimes, for which he was surrendered. In no country in Europe is that principle disputed.

It would also be well to inform the United States Chargé d'Affaires, if that has not already been done, that, under the provisions of the 12th section of the Extradition Act of 1870, a fugitive criminal cannot be detained in custody longer than two months from the date of his committal, unless the Secretary of State can show sufficient cause for further detention.

I am, &amp;c.

(For the Under-Secretary of State),

(Signed) G. EVEREST.

No. 148.

*Lord Tenterden to Mr. Jiddell.*

Sir,

Foreign Office, April 8, 1876.

I AM directed by the Earl of Derby to transmit to you the accompanying draft of a letter to the United States' Chargé d'Affaires respecting the extradition of Winslow, which has been prepared upon the receipt of your letter of this day's date; and I am to request that, in laying the same before Mr. Secretary Cross, you will move him to be good enough to inform Lord Derby whether it meets with his concurrence.

I am, &amp;c.

(Signed) TENTERDEN.

No. 149.

*Sir H. Selwin-Ibbetson to Lord Tenterden.—(Received April 10.)*

Sir,

Whitehall, April 10, 1876.

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of the 8th instant, transmitting a draft of a letter to the United States' Chargé d'Affaires at this Court, respecting the extradition of Ezra D. Winslow, and to signify to you, for the information of the Earl of Derby, Mr. Cross's concurrence in the views therein expressed.

I am, &amp;c.

(Signed) H. SELWIN-IBBETSON.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, April 11, 1876.*

WITH reference to previous correspondence respecting the extradition of Ezra D. Winslow, and especially to the letter I had the honour of addressing to you on the 8th ultimo, in which I stated to you, for the information of the United States' Government, that Her Majesty's Government would not feel themselves justified in authorizing the surrender of that prisoner until they should have received the assurance of your Government that he should not, until he has been restored, or had an opportunity of returning to Her Majesty's dominions, be detained or tried in the United States for any offence committed prior to his surrender other than the extradition crimes proved by the facts on which the surrender would be grounded, I have now the honour to call your attention to the inclosed copy of a telegram which appeared in the "Daily News" of the 29th ultimo, and which I have ascertained from Her Majesty's Legation at Washington to be substantially correct; and to request that you will be good enough to ascertain from your Government, for the information of Her Majesty's Government, whether the District Court at New York has the power to carry out the decision it is reported to have arrived at, viz., that the forger Lawrence, who was surrendered to the United States' Government under the Xth Article of the Treaty of 1842, can be tried for other offences besides those mentioned in the warrant.

In this country the Attorney-General would enter a *nolle prosequi*, and so put a stop to further proceedings in any prosecution; but Her Majesty's Government are not aware whether the Attorney-General of the United States has similar powers. The reported language of the District Court leads them to think that he has not.

If so, it would, in the opinion of Her Majesty's Government, be nugatory to enter into an arrangement such as I had the honour of proposing in my letter to you of March 8, above alluded to; and Her Majesty's Government see no solution of the present difficulty, but the passing of an Act of Congress which, while recognizing the acknowledged principle of international law that a fugitive can only be tried for the crimes or crimes for which he was surrendered, will enable the Government of the United States to guarantee that the condition which Her Majesty's Government are compelled to require under section 3, sub-section 2, of the Act of 1870, will be complied with.

With regard to future difficulties which may possibly arise on the general subject of extradition, Her Majesty's Government can see but one satisfactory solution, namely, the conclusion of a more comprehensive Treaty between the two countries, and one more suited to the requirements of the day than the existing arrangement.

I have, therefore, to request that you will express to your Government the hope of Her Majesty's Government that the negotiation of a Treaty, which will be so beneficial to the interests of the two nations, may be renewed as soon as possible.

In conclusion, I have the honour to remind you that, under the provisions of the 12th section of the Extradition Act of 1870, a fugitive cannot be detained in custody longer than two months from the date of his committal, unless the Secretary of State can show sufficient cause for further detention; and that, therefore, however much they may regret being unable to comply with the wishes of your Government respecting the surrender of Winslow, they will be unable to detain him in custody beyond that specified time.

I am, &c.  
(Signed) DERBY.

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Inclosure in No. 150.

*Extract from the "Daily News" of March 29, 1876.*

*New York, Tuesday, March 28, 1876.*

THE United States' District Court of New York has decided that the forger Lawrence, who was brought from England under the Extradition Treaty, can be tried for other offences besides those mentioned in the warrant. The Court cannot regard the order of the President to the contrary, or take notice of any agreement between the English and American Governments to that effect.

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## No. 151.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, April 12, 1876.*

WITH reference to your letter of the 10th instant, I am directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a letter which his Lordship has addressed to the United States' Chargé d'Affaires at this Court in regard to the extradition of Ezra D. Winslow.\*

I am, &amp;c.

(Signed) TENTERDEN.

## No. 152.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, April 15, 1876.*

I TRANSMIT to you herewith, for your information, copy of a letter, as marked in the margin,\* in regard to the extradition of Ezra D. Winslow.

I am, &amp;c.

(Signed) DERBY.

## No. 153.

*Sir E. Thornton to the Earl of Derby.—(Received April 16.)*

My Lord,

*Washington, April 3, 1876.*

WITH reference to my despatch of the 13th ultimo, I have the honour to inform your Lordship that, on the 28th ultimo, Judge Benedict gave his decision in the case of the forger Lawrence with regard to the plea put in by the accused, that the indictment showed an intention to try him for crimes other than those for which he was surrendered by Her Majesty's Government.

I have now the honour to inclose three different newspaper reports of Judge Benedict's decision. The one contained in the New York "Herald" is the most complete. I have, however, requested Mr. Archibald to procure me an accurate copy of the decision, which I hope to receive in a day or two.†

Your Lordship will observe that the Judge states that there is nothing in the Treaty of 1842 which grants to the accused immunity from being tried for crimes other than those for which he was surrendered. It may be that the letter of the Treaty contains no positive stipulation that the accused should not be tried for any other than the extradition crime, but its spirit certainly is that he shall be delivered up to justice only for the crime, specified in the Treaty, for which he was surrendered.

The learned Judge speaks, if his decision be correctly reported, of the Act of Congress of 1848 as being "expressly limited to cases of lawless violence." The Act of 1848 contains nothing about "lawless violence." Judge Benedict seems to have confounded it with the Act of March 3, 1840, which uses the words "lawless violence;" and, in doing so, he passes over the really strong point of the Act of 1848, by which the Secretary of State is authorized to order the person committed to be delivered up "to be tried for the crime of which such person shall be so accused." But even anyone who carefully reads the Act of March 3, 1869, must see that Congress contemplated the trial of the accused only for or on account of the crimes and offences specified in the Warrant of Extradition.

I have the honour to inclose copy of an extract from a Warrant of Extradition which Mr. Fish issued, at my request, on the 24th ultimo, in which it is stated, in accordance with the usual form, that the prisoner is to be delivered up "to be tried for the crime of which he is accused."

I have already stated to your Lordship, in my despatch of the 14th of February last, that Mr. Carlisle was of opinion that the various counts of the indictment against Lawrence substantially charged him with that crime only for which he was surrendered, and that I had not, therefore, thought it expedient to protest against his being tried under that indictment.

\* No. 150.

† See p. 72.

I understand that Lawrence was called upon to plead to this indictment on the 1st instant, but, by the advice of his counsel, refused to do so. The Court directed a plea of "not guilty" to be entered, and set the trial down for the second Wednesday in May.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure in No. 153.

*Extract from United States' Warrant of Extradition.*

NOW, therefore, pursuant to the provisions of section 5272 of the Revised Statutes of the United States, these presents are to require the United States' Marshal for the Eastern District of New York, or any other public officer or person having charge or custody of the aforesaid James Bowen, *alias* William Miller, to surrender and deliver him up to Adam Bligh, a constable of the united counties of Stormont, Dundas, and Glengarry, Canada, who has been authorized, in the name and on behalf of the British Government, by Her Majesty's Minister at this capital to receive him, or to any other person or persons who may in like manner be authorized, in the name or on behalf of the said Government to receive the said James Bowen, *alias* William Miller, to be tried for the crime of which he is accused.

No. 154.

*Sir E. Thornton to the Earl of Derby.*—(Received April 16.)

My Lord,

*Washington, April 3, 1876.*

IN consequence of some articles which have been published in the American newspapers relative to the objection made by Her Majesty's Government to the extradition of the forger Winslow, unless an engagement should be taken by the United States' Government that he should be tried only for which he would be surrendered, Mr. Faulkener, of the Committee on Foreign Relations, submitted to the House of Representatives, on the 30th ultimo, a resolution of inquiry upon the subject.

It was to the effect that the Committee on Foreign Affairs be instructed to inquire whether there be any conflict of construction between the Government of Great Britain and of the United States in reference to the Extradition Treaty of 1842, and whether, if any, what legislation is proper by Congress to remove any difficulties, if such exist, in the execution of said Treaty; and the Committee is authorized to call upon the Secretary of State for all recent correspondence touching the subject of this inquiry.

The resolution was agreed to by the House.

I have, &c.  
(Signed) EDWD. THORNTON.

No. 155.

*Mr. Lister to Mr. Liddell.*

Sir,

*Foreign Office, April 18, 1876.*

I AM directed by the Earl of Derby, to transmit to you, to be laid before Mr. Secretary Cross, a copy of a despatch from Her Majesty's Minister at Washington in regard to the extradition of C. L. Lawrence.\*

I am, &c.  
(Signed) T. V. LISTER.



No. 156.

*Mr. Lister to Mr. Liddell.*

Sir,

*Foreign Office, April 18, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a despatch from Her Majesty's Minister at Washington in regard to the extradition of Ezra D. Winslow.\*

I am, &amp;c.

(Signed) T. V. LISTER.

No. 157.

*Colonel Hoffman to the Earl of Derby.—(Received April 22.)*

My Lord,

*Legation of the United States, London, April 20, 1876.*

I HAVE the honour to acknowledge the receipt of your Lordship's note of April 11th, in reference to the case of Winslow, and to inform you that I telegraphed a summary of its contents to Mr. Fish on the day of its receipt, and sent him a copy of the note by the mail of the 13th instant.

I have, &amp;c.

(Signed) WICKHAM HOFFMAN.

No. 158.

*Colonel Hoffman to the Earl of Derby.—(Received April 22.)*

My Lord,

*Legation of the United States, London, April 21, 1876.*

REFERRING to General Schenck's note to Lord Granville of the 2nd of December, 1871, I have now to inform you that William E. Gray, *alias* James Payne Morgan, *alias* George Collenzo, has been arrested, examined, and this day committed to the House of Detention to await his extradition under the 10th Article of the Treaty of 1842; and I have to ask that he may be surrendered, under the provisions of the said Treaty, on the charges of forgery and the utterance of forged paper, and delivered to Mr. Sampson, who is duly authorized by the President of the United States to receive and convey him to New York, where he may be put upon his trial.

In addition to the copy of the Bill of Indictment, forwarded in the note of General Schenck above referred to, I now hand you, herewith, a copy of another true bill of indictment against the said Gray for forging and uttering certain other bonds, which has been submitted in evidence before the committing Magistrate at Bow Street.

I have, &amp;c.

(Signed) WICKHAM HOFFMAN.

No. 159.

*Sir E. Thornton to the Earl of Derby.—(Received April 24.)*

My Lord,

*Washington, April 10, 1876.*

WITH reference to my despatch of the 3rd instant, I have now the honour to inclose copy of decision pronounced by Judge Benedict with regard to the plea put forward by Lawrence that the indictment charged him with crimes other than those for which he was surrendered by Her Majesty's Government, and for which, therefore, he could not be tried.

I regret that the copy, which was sent me, seems to have been most carelessly made and to be full of errors; yet I was called upon to pay 5 dollars for it, which I venture to ask that I may be allowed to charge in the quarterly account of the extraordinary disbursements of the Mission.

Your Lordship will perceive that the Judge asserts that there is no language in the Treaty of 1842 which confers upon the accused any immunity such as that which he

claims, where he states that the Act of Congress of 1848 is a general law intended for the protection of extradited offenders, but that the protection it confers is expressly limited to cases of lawless violence; the date 1848 is either an error in the copy, or the Judge meant to refer to the Act of 1869.

The circumstances, which gave rise to the passage of this last-mentioned Act, were reported to your Lordship in my despatches of the 14th December, 1868, and of the 21st of same month, and to Lord Clarendon in my despatch of February 6, 1869.

Judge Benedict subsequently quotes the wording of the Act of 1848, in which it is enacted that the prisoner is to be delivered up "to be tried for the crime of which such person shall be so accused," and yet notwithstanding this phrase, he pronounces that it does not prevent the accused from being tried for crimes other than those for which he was surrendered.

He also insists that the Act of Parliament of 1870 does not limit the operation of 1842, and that there was no agreement between the two Governments for any such limitation. The Judge cites cases in which the right to try surrendered criminals for other offences has been exercised both in England and in the United States without question from either Government.

The Judge, however, finally throws the responsibility upon the Government of the United States, when he says, that if an agreement exists between that Government and the Government of Great Britain such as is set forth in the plea, the performance thereof is within the power of the Government by reason of its legal control over the prosecuting officer.

I have, &c.  
(Signed) EDWD. THORNTON.

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Inclosure in No. 159.

*United States Circuit Court.—Southern District of New York.*

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THE UNITED STATES *v.* CHARLES LAWRENCE.

BENEDICT, J.

March 27, 1876.

This case comes before the Court upon a demurrer interposed by the Government to a rejoinder filed by the Defendant.

The proceedings commence with an indictment charging the accused with several offences, all being for forgeries alleged to have been committed within the jurisdiction of this Court, and all, by Statute, offences against the United States. The accused was arrested within this District, by virtue of a Bench Warrant issued out of this Court upon the indictment found; and, thereupon, on being required to plead, interposed a special plea to the jurisdiction of the Court, in which he sets up that he was born a citizen of Great Britain, but had resided within the United States from the year 1847 to the year 1875, when he departed from the United States with intent to take up his residence in Great Britain, and resume his duty and allegiance as a subject of Her Majesty the Queen of Great Britain and Ireland.

That, on the 7th day of March, 1875, in Ireland, upon a requisition made on behalf of the Government of the United States, he was seized, and thereafter charged with the crime of forging and uttering a bond and affidavit purporting to be the bond and affidavit of one F. L. Blanding, and thereupon such proceedings were had upon said charge that, in pursuance of the Extradition Act of the Parliament of Great Britain, passed 1870, by arrangement between the Government of the United States and the Government of Great Britain, it was agreed in respect to this surrender that he should not, until he had been restored, or had an opportunity of returning to Her Majesty's dominions, be detained or tried within the United States for any offence committed prior to his surrender, other than the extradition crime of forging and uttering the said bond and affidavit. And thereafter, by force of said arrangement and agreement, and upon the faith thereof, an Extradition Warrant was issued, reciting that the defendant was accused of the crime of forging and uttering a certain bond and affidavit within the United States, by virtue of which warrant the accused was conveyed within the jurisdiction of the United States, where he is subject to be tried for the crime of forging and uttering the said bond and affidavit, and for no other crime or charge whatsoever.

In this plea reference is also made to the Act of Congress of March 3, 1869, in pursuance of which it is averred that the President of the United States, on the 21st of May, 1875, issued his order directly to the District Attorney of the United States for the



Southern District of New York, wherein said Attorney was directed to stay all proceedings against the accused, except upon the charges upon which he was extradited, until further order.

After setting out the order in full, and averring that no further order has been made by the President, the plea goes on to set out a direction from the Attorney-General of the United States, addressed to the District Attorney for the Southern District of New York, bearing date December 22, 1875, which orders of the President and direction of the Attorney-General the plea avers were made for the purpose of giving the defendant security against "lawless violence," and for the purpose of enforcing in his favour the rights to which he is entitled by virtue of the Treaty of 1842, the Act of Congress of 1869, the Act of Parliament of 1870, and the arrangement entered into as aforesaid.

The plea then avers that the offences with which the accused is charged in the indictment are not the offences on which his surrender to the United States was grounded, but are other and different crimes from those specified in the Warrant of Extradition; that he has been held in custody for the crimes specified in the Warrant of Extradition, but he has not been tried for either of said offences.

Whereupon the accused insists that this Court has no jurisdiction to try the present indictment until a reasonable time shall have elapsed after his trial for the crimes specified in the Extradition Warrant, that he may have an opportunity to return to Her Britannic Majesty's dominions.

To this plea the Government filed a replication, wherein it is admitted that the accused has been held in custody for the crimes specified in the Warrant of Extradition, and that he has not yet been tried for the said crimes. It is then averred that in the extradition proceedings against the accused he was not, as in the plea alleged, charged with forging and uttering a bond and affidavit purporting to be the bond of one F. Blanding, but that, in said proceedings, evidence of the forging of twelve bonds was offered and admitted, and made the basis of the claim of the United States for his surrender.

It is then averred that no arrangement was made between the Government of the United States and the Government of Her Britannic Majesty, express or implied, whereby it was provided and agreed that the accused should not, until he had been restored to, or had had an opportunity of returning to, Her Majesty's dominions, be detained or tried for any offence other than the extradition crime for which his surrender was claimed; and it is insisted that by the laws of Great Britain and of the United States, as well as by the practice of both parties to the Treaty, no limitation exists as to the number and character of the offences for which a person extradited may be tried.

The order of the President, set out in the plea, is admitted, but it is denied that such order was issued, or intended to be issued in pursuance of the Act of Congress of March 3, 1869, and after admitting the direction of the Attorney-General at the United States of December 22, 1875, set out in the plea, the replication proceeds to set out various and sundry other subsequent communications from the Attorney-General to the District Attorney, and from the District Attorney to the Attorney-General, by letter and telegraph, in respect to the accused, whereby it is claimed the last instructions of the Attorney-General are shown to be to move the trial of the present indictment.

And the plea concludes with a general averment that the offences in the indictment are the same specified in the Warrant of Extradition, and are not other and different offences; and that the District Attorney is not prohibited by any order or direction, nor is there any contract which should or can restrain him from moving the trial of this indictment.

To this replication, the defendant filed a rejoinder, in which the facts set forth in the plea are again set forth without substantial change.

To this rejoinder, the Government filed a general demurrer, and the cause is thus before the Court on the demurrer.

In determining the questions of law thus presented by these extraordinary pleadings, it is necessary at the outset to ascertain what questions are open for determination, inasmuch as it is urged in behalf of the defendant that only the pleading demurred to is before the Court for its judgment upon it, and it is insisted that the rule of pleading in civil cases, that judgment is to be given against the party committing the first fault, is not the rule in criminal cases.

Upon this question, my opinion is that the rule of pleading in criminal and civil cases is the same. The same reason for the rule exists in both classes of cases, and although no criminal case has been cited where the rule has been applied, the rule is stated by Archbold without qualification as the rule applied in criminal cases. He says (page 128), "A demurrer has the effect of laying open to the Court not only the

pleading demurred to, but the entire record, for their judgment upon it as a matter of law; and if two or more of the pleadings be had in substance, the Court will give judgment against the party who committed the first fault."

This rule is applied the more readily in the present instance because the examination of the issues of fact raised by the plea and replication is unnecessary, and ought not to be pursued unless it were indispensable to the protection of the legal rights involved. The entire record being thus before the Court, I pass at once to the plea, and proceed to determine whether the facts there stated are sufficient in law to show that this Court has no jurisdiction to try the present indictment.

In disposing of the questions argued before me upon this demurrer, I first notice the position taken, that all extradition proceedings, by their nature, secure to the person surrendered immunity from prosecution for any offence other than the one upon which his surrender is made.

This question is not open in this Court. It was decided in *Caldwell's case* (8 Bla., p. 131). That determination has received strong support from the decision of the Court of Appeals in this State in *Adrianse v. Lagrave* (59 N. Y., p. 115), where the existence of any such immunity was denied in a civil case, and it should be noticed that the present Circuit Judge of this Circuit took part in the decisions of the Court of Appeals, being then a member of the Court.

This ground of defence is therefore dismissed with the remark that an offender against the justice of his country can acquire no rights by defrauding that justice. Between him and the justice he has offended, no rights accrue to the offender by flight. He remains, at all times and everywhere, liable to be called to answer to the law for his violation thereof, provided he comes within the reach of its arm. But here it has been contended that the accused has such immunity by reason of the provisions of the Treaty of 1842, under which his surrender was made, which, it is correctly said, is a law of the United States, binding upon the Courts.

The decision of *Caldwell's case* is decisive of this question also, for *Caldwell* was surrendered under the Treaty of 1842. But, as no argument was made in *Caldwell's case* based upon the provisions of this particular Treaty, the argument now made in support of this construction of the Treaty may properly now be examined.

At the outset, let it be noticed that no language is used in the Treaty which can be supposed to confer the immunity here claimed. On the contrary, the language of the Treaty is calculated to repel the idea; for it declares that the offender shall be "delivered up to justice," a significant and comprehensive expression, plainly importing that the delivery is for the purposes of public justice without qualification.

It is, however, argued that both the parties to this Treaty have placed a construction upon its provisions, which confers the immunity for which the accused contends, and reference is made to Acts of Congress of 1869 and of 1848 (U. S. Rev. Statutes, §§ 5272 and 5275), and to the British Extradition Act of 1870, as supporting the assertion.

The Act of Congress of 1848 is a general law, intended for the protection of extradited offenders, but the protection it confers is expressly limited to cases of "lawless violence." It is true that it assumes, as well it may, that the offender will be tried for the offence upon which his surrender is asked, but there are no words indicating that he is to be protected from trial for all other offences. The absence of any provision indicating an intention to protect from prosecution for other offences, in a statute having no other object than the protection of extradited offenders, is sufficient to deprive of all force the suggestion that the Act of 1848, as a Legislative Act, gives to the Treaty of 1842 the construction contended for by the accused.

So, of the Act of 1848, the provision of which relied upon is as follows: "It shall be lawful for the Secretary of State to order the offender to be delivered to such person as shall be authorized in the name and on behalf of such foreign Government, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly."

It does not seem reasonable to suppose that it was the intention of Congress, by the above language, to give a legislative construction to the existing Treaty of 1842.

The provision of the Act of 1848 is within the broad provision of the Treaty, but does not restrict the operation of that provision, and it may safely be assumed that, if the intention to limit the effect, or give a construction to that, or if any other Treaty had been entertained—assuming such a function to belong to a statute of this character—that intention would have been plainly expressed.

The Acts of Congress referred to, therefore, fail to afford a legislative construction



of the Treaty in the particular case (?) under consideration. It is still more difficult to find support for the doctrine of the defence in the provisions of the British Extradition Act of 1870.

How can it be that, without any action on the part of the Treaty-making power of the United States, the Parliament of England, by a Statute of England passed twenty-eight years after the Treaty of 1842, can engraft upon that Treaty a provision of immunity not found in the Treaty, and which must thereafter be enforced by Courts as part of the laws of the United States.

The effect proper to be given by the Executive Department of the Government to any condition found in an Extradition Statute of England to which the Government of the United States has assented in any particular case, is not under consideration. Here the question is judicial, and it is whether the British Act of 1870, by reason of its subject-matter, becomes a law of the United States, or as such affords a legislative construction of this Treaty, binding upon the Courts of the United States.

Upon such a question no time need be spent, and it is dismissed with the observation that it would appear that the English Courts incline to the opinion that the Act of 1870 has no effect in England, even to limit the operation of the Treaty of 1842, as is seen by the opinions delivered in the Court of Queen's Bench in *Bouvrier's case* (27 Law Times R., p. 844).

The words of the Lord Chief Justice in that case are:—

"I see plainly that it was the intention of the Legislature, that is to say, it was intended (by the Act of 1870) while getting rid of the Statutes by which the Treaties were confirmed, to save the existing Treaties in their full force and effect."

Nor is it made to appear that any such construction of the Treaty of 1842 has been adopted by the Executive Department of either Government.

An agreement for such immunity in the present instance is set up by the plea.

But it is competent for the Government of the United States to enter into such an agreement with the Government of England, in the absence of any provision for immunity in the Treaty, and the demand for such an agreement on the one side, as well as the giving thereof on the other, leads to the inference that no such protection is afforded by the Treaty itself. A single instance of such an agreement does not, therefore, help the argument.

The understanding of the Treaty by the Executive Department is better shown by the action taken or omitted in the cases that have arisen where there has been an agreement, as in the case of *Hulbourn*, who was surrendered by the United States upon the request of England for an extradition crime—a trial was had in England for an offence not provided for in the Treaty without interference by the Executive there, and without complaint from the Government of the United States. So also, *Burley*, an offender surrendered by England to this Government, was put upon trial in this country for an offence other than the one upon which he was extradited, and the case being called to the attention of the Law Officers of the Crown, it was considered that, "if the United States put him *bond fide* upon his trial for the offence in respect of which he was given up, it would be difficult to question the right to put him upon his trial also for piracy, or any other offence which he might be accused of committing within this territory, whether or not such offence was aground of extradition or within the Treaty." No case has been referred to where the right above spoken of has been questioned by the British Government; on the contrary, if I am correctly informed, such right has not hitherto been denied in England.

As to the effect of the fact of a previous trial for the offence of which the offender was given up, to which allusion is above made, it is plain that such fact is immaterial in determining the judicial question where legal immunity is set up by way of defence in a prosecution for other offences, however important that fact may be, as evidence of good faith in determining the political question when it arrives.

It may be added, that the action of the Executive department of the Government of the United States in the cases where extradited offenders have been tried in this country for offences other than those upon which their surrender had been asked has a significant bearing upon the legal question under consideration, because in criminal cases, as distinguished from civil cases, the executive, by reason of the power to pardon, is not confined to a consideration of the political question alone, but may also act upon a determination of the judicial question. But it is further said that the British Act of 1870 amounts either to an abrogation of the extradition section of the Treaty of 1842, or to a modification of the provisions, or inasmuch as by the 11th section, the Government of Great Britain could at any time abrogate that portion of the Treaty, the Act of 1870, if considered by the Government of the United States as an abrogation, would have been

so declared, or, in the absence of such a declaration, must be considered to be acquiesced in by the Government of the United States as its construction of the Treaty, and becomes a part of the Treaty binding upon the Courts.

This proposition is answered by what has been already said in regard to the effect of the British Act of 1870, and the action of the Government of the United States in the cases which have hitherto arisen.

Moreover, if the action of the two Governments, and the Act of 1870, be given the utmost effect possible in favour of the accused, all that can be extracted from them is an implied engagement to afford protection to persons extradited in pursuance of the Treaty from prosecution for causes other than those upon which their surrender was asked, which addresses itself to the political, not to the judicial, department.

It is not intended to suggest that such can be their effect, but simply to express the opinion that in any respect they have no greater effect, and, in view of the language of the Treaty, cannot be relied on as affording a legislative or executive construction of that instrument binding upon the Courts.

It may, therefore, without hesitation, be declared that the claim of legal immunity here made is without foundation in the Treaty of 1842. In support of this conclusion, reference is made to the authority of the Court of Appeals of the State of New York, which High Court in Lagrave's case was called on to declare the effect of this same Treaty.

There remains to be considered that portion of the defence which is based upon the order of the President, or the direction of the Attorney-General set out in the plea.

In regard to this defence, it is sufficient to say that no order of the President nor direction of the Attorney-General can have any legal effect to restrict or to enlarge the jurisdiction conferred by law upon the Courts.

The Courts, in determining the extent of their jurisdiction, look to the law, and within that jurisdiction they are absolutely free from the control of any other department of the Government (*vide* remarks of Blatchford J., in *Blaisdill's case*, 3 *Benedict*, p. 143).

It should be observed in this connection that it is evident that neither of the order of the President, nor the communication of the Attorney-General to the District Attorney of December 22, 1875, set out in the plea, were intended to be resorted to as a matter of defence, but are official communications intended solely for the consideration or guidance of the officer to whom they were addressed, and presumably have no reference whatever to judicial action.

The mass of letters and telegrams with which the record is encumbered are therefore to be considered as wholly irrelevant. They are outside the case, and constitute on ground of objection to the jurisdiction of this Court.

It may be added, that the presence of the indictment before this Court, and moved for trial by the District Attorney by whom the Government is represented before the Court, as also it may now be by the Attorney-General in person, by virtue of the Act of 1870 (U. S. Rev. St., section 359) is inconsistent with the averment that the trial is moved in opposition to the directions of the Attorney-General.

Where the Attorney-General of the United States, having knowledge of the moving of a criminal trial, permits the moving thereof in law, he directs the same, and the Court must consider that the trial to be moved by the Government.

All the positions taken in behalf of the accused have now been examined, except that based upon the fact set up in the plea, that in the case of the accused an express agreement was made between the Governments of the United States and of Great Britain, by which it was provided and agreed that the accused should not, until he had been restored, or had an opportunity of returning to Her Majesty's dominions, be detained or tried within the United States for any offence committed prior to his surrender other than the crime of forging and uttering the said bond and affidavit on which his surrender was thus claimed.

Upon this point the argument made is, that the existence of such an agreement being admitted by the demurrer, it must be recognized by the Court, and the accused protected by the Court from prosecution upon an indictment charging offences other than those mentioned in the agreement as stated. This position is supposed to be supported by the rule applied in civil cases when a Defendant has been inveigled within reach of the process of the Court. But the rule referred to has no application in criminal cases. The duty of the Courts in criminal cases is stated by the Court of King's Bench, in *Scott's case* (9 B. & C. 447). *Scott* was indicted in England for perjury, and a warrant for her arrest issued. The officer proceeded to Brussels, and there finding *Scott*, seized her without resort to extradition proceedings, or other legal process. Application for



assistance was then made by her to the British Ambassador at Brussels, who refused to interfere, and she was carried to London, where she was brought before the Court upon *habeas corpus*, and the above facts made to appear. Tenterden (Chief Justice), in delivering the opinion of the Court, thus lays down the rule in criminal cases. "The question is, whether, if a person charged with crime is found in this country, it is the duty of the Court to take care that such a party shall be amenable to justice, or whether we are to consider the circumstances under which she was brought here. I thought, and continue to think, that we cannot inquire into them."

These words express the opinion of this Court. A different rule would seriously embarrass the administration of the criminal laws, and cannot be permitted here to obtain, until it has received the sanction of controlling authority.

If, then, an agreement exists between the Governments of the United States and of Great Britain, such as is set forth in the plea, the performance thereof is within the power of the Government by reason of its legal control over the prosecuting officer. And all that need be said here is, that such an agreement can avail nothing to a Defendant setting it up by way of plea to the jurisdiction of the Court before which this trial is moved by the Government.

The decision therefore must be, that the plea to the jurisdiction, and all subsequent pleadings in this case be set aside, with liberty to the Defendant to plead anew to the charges in the indictment contained.

No. 160.

*Colonel Hoffman to the Earl of Derby, April 20, 1876.*

[This letter was withdrawn. See No. 199.]

No. 161.

*Lord Tenterden to Mr. Liddell.*

Sir, *Foreign Office, April 24, 1876.*

I AM directed by Her Majesty's Secretary of State for Foreign Affairs to transmit to you a copy of a letter, with its inclosures, from the United States' Chargé d'Affaires at this Court, applying, on the grounds stated in the accompanying papers, for the extradition of William E. Gray;\* and I am to request you to move Her Majesty's Secretary of State for the Home Department to take such steps in this matter as may be right and proper, and to inform Lord Derby thereof.

I am, &c.

(Signed) TENTERDEN.

No. 162.

*Lord Tenterden to Mr. Liddell.*

Sir, *Foreign Office, April 25, 1876.*

WITH reference to your letter of the 7th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a letter from the United States' Chargé d'Affaires at this Court,† on the subject of the extradition of Ezra D. Winslow.

I am, &c.

(Signed) TENTERDEN.

No. 163.

*Colonel Hoffman to the Earl of Derby.—(Received April 26.)*

My Lord, *Legation of the United States, London, April 26, 1876.*

REFERRING to your note of April 11th, and to mine of the 20th instant, I have the honour to inform your Lordship that Mr. Fish received a copy of your note

\* No. 158.

† No. 160.

yesterday. To-day I am in receipt of a telegram from him, in which he states, "has right," which I understand to be in answer to your inquiry whether the District Court at New York has the power to carry out its decision in the case of the forger Lawrence, to the effect that he can be tried for other offences besides those mentioned in the warrant.

I have, &c.  
(Signed) WICKHAM HOFFMAN.

No. 164.

*Lord Tenterden to Mr. Liddell.*

Sir, *Foreign Office, April 27, 1876.*  
WITH reference to your letter of the 10th instant, I am directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a note from the United States' Chargé d'Affaires at this Court,\* in regard to the case of C. L. Lawrence.

I am, &c.  
(Signed) TENTERDEN.

No. 165.

*Lord Tenterden to Mr. Liddell.*

Sir, *Foreign Office, April 27, 1876.*  
I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a despatch from Her Majesty's Minister at Washington, in regard to the case of C. L. Lawrence.†

I am, &c.  
(Signed) TENTERDEN.

No. 166.

*Mr. Liddell to Lord Tenterden.—(Received April 29.)*

My Lord, *Whitehall, April 29, 1876.*  
I AM directed by Mr. Secretary Cross to acquaint you that Her Majesty's Government have decided to adhere to the decision previously conveyed to General Schenck and Mr. Hoffman that E. D. Winslow and the other two extradition prisoners now in custody on the requisition of the United States' Government, under the Treaty of 1842, cannot be delivered up to that Government unless an assurance is given that they will not be tried in the United States for any offence committed prior to their surrender other than the extradition crimes proved by the facts on which the surrender would be granted.

I am to add, for the information of the Earl of Derby, that Winslow having been committed on the 3rd of March the two months allowed by law for his detention expires on the 3rd of May, unless Mr. Cross can show good cause for the man's further detention.

Charles James Brent was committed on the 28th of March, and William Gray on the 21st of April, and the same observation applies to them.

I am to suggest that this information should be at once communicated to Mr. Hoffman, and sent to Sir E. Thornton by telegram, in order that there may be time before next Wednesday for a reply to be sent by telegram if desired.

The detailed answer to Mr. Hoffman's letter of the 20th April will be sent to-night or to-morrow morning.

I am, &c.  
(Signed) A. F. O. LIDDELL.

\* No. 163.

† No. 159.



No. 167.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, April 29, 1876.*

I TRANSMIT to you herewith, for your information, copy of a letter from Colonel Hoffman in regard to the case of Ezra D. Winslow.\*

I am, &c.  
(Signed) DERBY.

No. 168.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, April 29, 1876.*

WITH reference to your note of the 20th instant, I have the honour to state to you that the question of the extradition of Winslow and of the other two persons now in custody on the requisition of the United States' Government has been again considered by Her Majesty's Government, and that they have come to the conclusion that it will not be in their power to surrender the prisoners unless an assurance is given by the United States' Government that they will not be tried in the United States for any offence committed prior to their surrender, other than the extradition crimes proved by the facts on which the surrender would be granted.

The period allowed by law for the detention of Winslow expires on the 3rd of May, and for that of Brent and Gray on the 28th of May and 21st of June respectively, and they cannot be detained after those dates unless good cause can be shown by Her Majesty's Secretary of State for the Home Department for their further detention.

I shall have the honour of sending a detailed answer to your note in a few days, but I have thought it right to inform you at once of the decision of Her Majesty's Government in order that you may have time to communicate with your Government before the release of the prisoner Winslow.

I am, &c.  
(Signed) DERBY.

No. 169.

*Colonel Hoffman to the Earl of Derby.—(Received May 1.)*

My Lord,

*Legation of the United States, London, April 29, 1876.*

REFERRING to my note of the 20th instant, I have the honour to inclose to you herewith, under the instructions of Mr. Fish, a copy of his despatch of March 31st, upon which my note was based.

I beg to assure your Lordship that both Mr. Fish and I understand and appreciate the sad circumstances which have prevented your Lordship from receiving me, with a view to my reading to you the despatch of Mr. Fish.

In forwarding this despatch I am instructed to say that it is done in the hope of still preserving the Treaty, and with the further hope that your Lordship will find therein sufficient cause to prevent the discharge of Winslow, and to order his surrender under the 10th Article of the Treaty of 1842, and in accordance with the requisition of the United States.

I am further instructed to say that while my Government cannot recognize the Act of 1870 as controlling extradition under the Treaty, still, as Her Majesty's Government claims to be bound thereby, Mr. Fish hopes that your Lordship will see in the 12th section of that Act, authority for your intervention to cause the surrender of Winslow in accordance with the Treaty.

I have, &c.  
(Signed) WICKHAM HOFFMAN.

## Inclosure in No. 169.

*Mr. Fish to Colonel Hoffman.*

Sir,

*Department of State, Washington, March 31, 1876.*

REFERRING to previous correspondence in reference to the extradition of Winslow, in custody in London, I have now to acknowledge the receipt of your letter, under date of March 10, inclosing a note addressed to you by Lord Derby, of March 8th, and your reply of the same day.

With General Schenck's letter was inclosed a note from Lord Derby, dated February 29th, in which it was stated that Her Majesty's Secretary of State for the Home Department had drawn attention to sub-section 2 of the 3rd section of the British Extradition Act of 1870, and feared that the claim by this Government of the right to try Lawrence (who had been recently surrendered) for crimes other than that for which he had been extradited, amounts to a denial that any such law as is referred to in the British Act exists; and the disclaimer of this Government of the existence of any implied understanding, in respect to trial for crimes other than extradition crimes, together with the interpretation put upon the Act of Congress of August 12, 1842 (which is doubtless an error for 1848), preclude any longer the belief in the existence of an effective arrangement, which Her Majesty's Government had previously supposed to be practically in force, and it was added that the Secretary for the Home Department was compelled to state that if he were correct in considering that no such law exists, he would have no power, in the absence of an arrangement, to order the extradition of Winslow, even although proper proceedings had been taken for that purpose.

Lord Derby called General Schenck's attention to the intimation which he had received from the Home Department, and requested that the matter be brought to the knowledge of this Government.

It is to be remarked, however, that in this note the Foreign Office, as distinguished from the Home Office, expressed no opinion on the question involved, but confined itself to requesting that the views of the Home Office might be communicated to this Government.

A few days later, however, on the 8th of March, Lord Derby assumes the more advanced position previously occupied only by the Home Department, and writes as follows: "Her Majesty's Government do not feel themselves justified in authorizing the surrender of Winslow until they shall have received the assurance of your Government that this person shall not, until he has been restored, or had an opportunity of returning to Her Majesty's dominions, be detained or tried in the United States for any offence committed prior to his surrender, other than the extradition crimes proved by the facts on which the surrender would be grounded," and requesting that this decision be communicated to this Government.

To his note you made reply under date of March 8th, referring to the general practice for many years under the Treaty, and calling attention to the construction given to the 7th section of the Act of 1870, in the case of Bouvier.

No further correspondence has reached this Government, and the matter rests upon this note of Lord Derby, and your reply.

The reasons given by Lord Derby for the course intimated in his note arise, as he states, from what had taken place in this country in the Lawrence case, and the positive terms of section 3, sub-section 2 of the British "Extradition Act" of 1870.

Moreover, it has been stated that the Home Office had even gone further, and had expressed the opinion that, not only had some implied understanding been reached as to the particular crime for which Lawrence should be tried, but that it would be in violation of the law of the United States, and of the general laws of extradition of all countries, to try any prisoner for any other crime than the particular extradition offence for which he had been surrendered.

With regard to any such understanding, either expressed or implied by any authorized declaration or engagement of this Government, no evidence is adduced—none can be adduced. This Government asked the surrender of Lawrence, precisely as it has asked the surrender of all other fugitives who have been delivered by Great Britain under the Treaty of 1842, complying on its part with the requirements of the Treaty; and neither by expression, nor by implication, entering into any arrangement; but merely requiring the fugitive to be "delivered up to justice." It furnished such evidence of criminality, as according to the laws of Great Britain, where the fugitive was found, would have justified his apprehension and commitment for trial, if the crime or offence had been there committed.



Great Britain recognized the compliance by this Government with all that the Treaty required, and delivered the fugitive up to justice.

The allusion made by the Home Office to the case of Lawrence needs possibly a passing remark. Charles L. Lawrence is charged with a series of forgeries whereby the Government of the United States claims to have been defrauded to an amount of not far short of 2,000,000 dollars on Custom-house entries. He is supposed to have numerous and influential confederates, both in this country and in England, who are suspected of having shared in the spoils resulting from these alleged frauds upon this Government. A large number of indictments have been found against Lawrence, and proceedings either civil or criminal are either pending or imminent against supposed accomplices. It is supposed that prosecution of these cases might possibly disclose names on either side of the Atlantic, in connection with the alleged frauds, not yet brought before the public.

In the spring of 1875, Lawrence fled and escaped to Europe, and was arrested under the assumed name of Gordon at Queenstown, on a requisition for his surrender under the Treaty. There were proved (as I am informed) before Sir Thomas Henry, in London, twelve or thirteen distinct charges of forgery, each on papers connected with a different invoice of goods. The Representative of this Government supposed the extradition was made on all the charges; but the letter or report of Sir Thomas Henry to the British Home Office, led to the issue of a warrant of surrender of Lawrence on a single charge of forging a bond and affidavit, on which warrant the keeper of the gaol delivered Lawrence to the agent appointed by the President to receive him; the terms of the warrant were not known to any agent or officer of this Government (as is represented to me) until long after Lawrence's return to the United States. His counsel and friends appear to have been apprised of the fact, that although proof was presented on some twelve or thirteen charges of forgery, the warrant of surrender seems to be confined to the forging a bond and affidavit. Up to this date Lawrence has been arraigned only upon one indictment based on the forging of the bond and affidavit mentioned in Sir Thomas Henry's report to the Home Office; and he has not been arraigned for any offence other than the extradition crimes, proved by the facts in evidence before Sir Thomas Henry, and on which his surrender was based.

Although not arraigned on any other indictment than for the forgery for which he was extradited, the British Home Office has raised the question that he may possibly be tried upon other charges and for other crimes.

It seems, therefore, that the Home Office of Great Britain undertakes to decide what is the law of the United States, as well as of Great Britain, and assumes that the law of the United States, as well as general law of extradition, and the "Extradition Act" of Great Britain, prevent the trial of a criminal surrendered under the Treaty of 1842, for any other offence other than the particular offence for which he was extradited; and the position which it takes, involves the assumption, that in demanding an extradition under the Treaty, the United States is bound by the provisions of the Act of 1870, whether in conflict with the Treaty or not, and it claims to have "supposed" that an "effective arrangement was in force," that no criminal so surrendered should be tried for any other than the particular extradition offence; on the faith of which arrangement it is claimed that surrenders have heretofore been made, and without which it is now said that a surrender would not be possible under the English Act; but as already said nothing is adduced in support of the belief of the existence of such supposed arrangement.

These positions are so different from the understanding of this Government, and so opposed to the views which it was supposed were entertained by Great Britain, and which have been recorded in Parliamentary papers; which have been asserted in diplomatic correspondence; and been recognized in judicial decisions in that as in this country; and set forth by writers on extradition law, that I learn from Lord Derby's note with surprise, equal to my regret, that they appear to be supported by the Foreign Office.

The Act of August 12, 1848, reproduced in the revised statutes (section 5,270 to 5,276), referred to in the correspondence, does not affect or limit the rights of the two Governments on the question.

This Act is simply a general Act, for carrying into effect Treaties of extradition. It provides the machinery, and prescribes the general mode of procedure, but does not assume to determine the rights of the United States, or of any other State, which are governed wholly by the particular provisions of the several Treaties; nor to limit or construe any particular Treaty.

In some few Treaties between the United States and foreign countries, provisions

exist that the criminal shall not be tried for offences committed prior to extradition, other than the extradition crime; and in others no such provision is included.

Again, under some Treaties the citizens or subjects of the Contracting Powers are reciprocally exempt from being surrendered, while others contain no such exception. The United States' Act of 1848 is equally applicable to all these differing Treaties. If the surrendered fugitive is to find immunity from trial for other than the offence named in the warrant of extradition, he must find such immunity guaranteed to him by the terms of the Treaty, not in the Act of Congress. The Treaties which contain the immunity from trial for other offences have been celebrated since the date of the Act of 1848. At that date the United States had Treaties of Extradition only with Great Britain and with France, neither of which contained the limitation referred to.

The terms of the respective Treaties alone define or can limit the rights of the contracting parties.

The construction of the Treaty between the United States and Great Britain by the two Governments, and their practice in its enforcement for many years, were in entire harmony.

In each country surrendered fugitives have been tried for other offences than those for which they had been delivered, the rule having been that where the criminal was reclaimed in good faith, and the proceeding was not an excuse or pretence to bring him within the jurisdiction of the court, it was no violation of the Treaty, or of good faith, to proceed against him on other charges than the particular one on which he had been surrendered. The judicial decisions of both countries affirm this rule. It was so held in a case of inter-State extradition by Judge Nelson in *Williams v. Bacon*, 10 Wendell, 636, and the same principle was laid down by the Court of Appeals of New York in a late case of *Adrian v. Lagrave*, who had been delivered up under the Treaty with France. In *United States v. Caldwell* (8 Blatchford, Cir. Ct., Rep. 131), Caldwell, after extradition from Canada for forgery in 1871, was indicted for bribing an officer; and the plea was entered that the prisoner was brought within the jurisdiction of the court upon a charge of forgery under the Treaty, and that the offence specified in the indictment was not mentioned in the Treaty.

A demurrer being interposed, the court decided the prisoner had been extradited in good faith, charged with the commission of a crime, and must be tried.

In the case of *Burley*, extradited from Canada on a charge of robbery, the prisoner was tried on assault with intent to kill.

In the case of *Heilbronn*, who was extradited from this country for forgery, and tried in Great Britain for larceny, the facts, as stated by the Solicitor-General of Great Britain, who had charge of the proceedings, and who was examined before the late British Commission on the extradition question, were, that the prisoner being extradited for forgery was acquitted, and was thereupon tried and convicted for larceny, an offence for which he could not have been surrendered, not being enumerated in the list of crimes mentioned in the Treaty.

In Canada, there is the same current of authority.

In the case of *Von Earnam*, *Upper Canada Reports* 4 c., p. 288, the prisoner was surrendered by the United States to Canada upon the charge of forgery, and application was made for release on bail, on the ground that the offence was at most the obtaining of money under false pretences, and not within the Treaty. Macaulay, C. J., said, in denying the motion, that he was disposed to regard the offence as forgery, but even if the offence were only false pretences, after "being in custody, he is liable to be prosecuted for any offence which the facts may support."

In *Paxton's case*, 10, *Lower Canada, Jurist*, 212, 11, 352, the prisoner was charged with uttering a forged promissory note. He pleaded that he had been extradited upon the charge of forgery, and could not be tried for uttering forged paper, or for any other than the extradition offence. The Court decided that the trial should proceed. The prisoner thereupon protested against being called upon to plead to any other charge than that for which he was extradited, but he was tried, found guilty, and the conviction affirmed on appeal.

In addition to the foregoing, Judge Benedict, in his opinion in *Lawrence's case*, delivered within a few days past, entirely coincides in these views, and the Solicitor-General of the United States, in his opinion in *Lawrence's case*, dated July 16, 1875, reaches the same conclusions.

An examination of the Report of the Select Committee on Extradition of the House of Commons, which sat in 1868, under whose superintendence the Extradition Law of 1870 was framed, and which was composed of some of the most distinguished public men of Great Britain, among whom were the Solicitor-General, Mr. Mill,



Mr. Forster, Sir Robert Collier, and Mr. Bouverie, shows that the law of the United States, and the practice in regard to extradition, were perfectly well understood, and they are distinctly referred to on several occasions.

Mr. Hammond, now Lord Hammond, for many years Under-Secretary of State, in speaking of Burley's case, stated that, as it was suggested that the prisoner, who had been surrendered on a charge of robbery, was about to be tried for piracy, the matter had been referred to the Law Officers of the Crown, and that it was held that, if the United States put him *bond fide* on his trial for the offence for which he was extradited, it would be difficult to question their right to try him for piracy, or any other offence of which he might be accused, whether such offence was or was not a ground of extradition, or even within the Treaty; and added, "we admit in this country that if a man is *bond fide* tried for an offence for which he was given up, there is nothing to prevent his being subsequently tried for another offence either antecedently committed or not" (answer 1036).

Mr. Mullens, an eminent member of the bar, who was counsel in the Lawrence case, in reply to a question of Sir Robert Collier, said that in his opinion a surrendered criminal ought to be tried for an offence other than the extradition offence arising from the same facts; and Mr. Forster (question 1214), considering the propriety of the proposed stipulation, that a person should be tried for no offence other than the extradition offence, said: "The Americans do not make that stipulation, or else you would not have been able to try Hielbrunn for another offence," to which Mr. Mullens responded, "No, there is no stipulation of that kind in the case of America."

Mr. Mill thereupon said (question 1216), "As I understand it, the Treaty with America would not prevent our trying a man for a different offence from that for which he had been given up," to which Mr. Mullens replied, "It would not; there is no stipulation that he shall not be tried for any other offence." Then follows question 1217: "Would you wish to extend that state of things to other countries?" and the reply: "With regard to America, I have never found any difficulty about it," &c.

So far as can be ascertained, there was absolutely no dissent at any time from these views as to the law and practice under the Treaty, and the only question seemed to be whether it was wise to attempt to change them.

Mr. Clarke (an eminent British authority), in his Treatise on Extradition, says: "It was quite clear that neither the Treaty nor the law of the United States contains the provisions of the Extradition Act of 1870." It would appear, therefore, by the judicial decisions, by the practice of both Governments, and by the understanding of the persons most familiar with proceedings in such cases, and the most competent to judge, that where a criminal has been in good faith extradited for an offence within the Treaty, there is no agreement express or implied, that he may not also be tried for another offence of which he is charged, although not an extradition offence. He is, in fact (in accordance with the language of the Treaty) "delivered up to justice;" and in the absence of any limitation by Treaty, to "justice" generally, each independent State being the judge of its own administration of justice. Surely Great Britain will not allow the Legislature of another State to prescribe, or to limit, the cases, or the manner which justice is to be administered in her Courts, and she will not expect the United States to be less tenacious of its independence in this regard.

Now, for the first time since the signing of the Treaty of 1842, Great Britain raises the question of her right to demand from the United States, as a condition of the execution by Great Britain of her engagement to surrender a fugitive criminal charged with a series of stupendous forgeries, a stipulation or agreement, not provided for in the Treaty, but asked on the ground that an Act of Parliament passed some twenty-eight years after the Treaty has been in force, prescribes it as one of the rules or conditions which should apply to arrangements for extradition, when made with a foreign State.

This involves the question whether one of the parties to a Treaty can change and alter its terms, or construction, or attach new conditions to its execution, without the assent of the other. Whether an Act of Parliament of Great Britain, passed in the year 1870, can change the spirit or terms of a Treaty with the United States of nearly thirty years anterior date, or can attach a new condition to be demanded of the United States before compliance by Her Majesty's Government with the terms of the Treaty as they have been shown to have been uniformly understood and executed by both Governments for the third of a century.

As this Government does not recognize any efficacy in a British Statute to alter, or modify, or to attach new conditions to the executory parts of a previously existing Treaty between the United States and Great Britain, I do not feel called upon to

examine particularly the provisions of the Law of 1870. But inasmuch as Great Britain seeks to impose the provisions of that Act upon the United States in the execution of a Treaty of many years anterior date, I do not fail to observe that while by the Act Great Britain assumes to require that no surrendered fugitive shall be tried in the country which demands his extradition for "any offence other than the extradition crime" (in the singular), proved by the facts on which the surrender is grounded, she reserves to herself the right to try a fugitive surrendered to her for such crimes (in the plural), as may be proved by the facts on which the surrender is grounded.

This does not seem to be wholly reciprocal, and if the United States were disposed to enter into a Treaty under this Act, it might expect some greater equality of right than a cursory examination of this provision in the Act seems to provide.

It is quite well known that after the passage of the Act of 1870, an effort was made to enter into a Treaty with Great Britain, which should enlarge the number of extradition offences, and otherwise extend the provisions of the existing Treaty.

At the outset it was apparent that the Act of 1870 was not an Act to carry into effect Treaties or Conventions for extradition, as is the United States Acts of 1848, but one providing a system to which all subsequent Treaties of Extradition must be adapted, and which could be applied to enforce Treaties or arrangements made subject to its provisions.

This Government was unable to agree to any arrangement based on the provisions of the Act of 1870, and in a note addressed to Sir Edward Thornton, the British Minister, under date of January 27, 1871, he was informed that "this Government understands the 27th section of the Extradition Act of 1870, as giving continued effect to the existing engagements for the surrender of criminals. Imperfect as they are, in view of the long coterminous frontier between British North America and the United States, we must be content to suffer the inconvenience until Parliament shall put it in the power of Her Majesty's Government to propose a more comprehensive and acceptable arrangement."

The British Government was thus distinctly and formally advised of the position, and of the views of the United States, and no exception thereto has been expressed.

A further effort to effect a Treaty was made in 1873, after the passage by the British Parliament of an Act amending the Act of 1870, which resulted in failure from precisely similar reasons.

This failure to negotiate a new Treaty arose solely because the United States could not accept as part of it some of the provisions of the Act of 1870, and preferred to go on under the Treaty of 1842, as theretofore construed, and practically carried into effect by each Government; and thus we have proceeded up to the present time.

In support of the construction which this Government in 1871, in the note to Sir Edward Thornton above referred to, gave to the 27th section of the Extradition Act, it appears that when the Court of Queen's Bench was called to pass upon the very question in the case of *Bouvier*, 27 Law Times, N. S. 844, the Attorney-General stated that the intention had been to make a general Act, which should apply to all cases except where there was anything inconsistent with the Treaties referred to. So far as the point was passed on, the Lord Chief Justice expressed the opinion that it was the intention, while getting rid of the statutes by which the former Treaties were carried out, at the same time to save those Treaties in their full integrity and force, and that the result had been accomplished. One of the other Justices thought the question somewhat doubtful, and the third agreed with the Chief Justice. The Solicitor-General of the United States, in his opinion in *Lawrence's case* given in August of last year, reached the same conclusion, that the Treaty was not affected by the Act.

It cannot be readily believed that Parliament intended by the Acts of 1870 to claim the right to alter the Treaties in existence without notice to the other Governments, or to impose new conditions upon Foreign Governments seeking extraditions under Treaties in existence prior to that Act.

The United States has declined to become subject to the British Act of 1870, and with knowledge of this the Government of Great Britain has continued constantly to ask and obtain extraditions under the Treaty of 1842, and since the refusal of the United States to negotiate a new Treaty under the provisions of that Act.

Since the passage of the Act of 1870, Great Britain has obtained from this Government some thirteen warrants of extradition, and has instituted a much larger number of proceedings to obtain extradition. In no instance has Great Britain thought it necessary to tender any such stipulation as she now asks from the United States, or to present her requests for extradition in any way different from that in which they were presented prior to 1870. The United States in the same time have



instituted numerous proceedings, and at this moment have three criminals in London in custody upon charges of forgery, whose extradition this Government is seeking in the usual manner provided by the Treaty.

During this period no intimation has reached this Government that the Treaty of 1842 was not in full force, or that the Act of 1870 was claimed to limit its operation, or to impose upon this Government the necessity either of changing its laws, or of giving stipulations not known to the provisions of the Treaty, and not heretofore suggested, nor has any representation been made to this Government by that of Great Britain, on account of any proceedings taken in the case of Lawrence, mentioned in the opinion attributed to the Home Office, in the note of Lord Derby to General Schenck before referred to.

But now, with three important cases pending in London at the present time for extradition, in one of which at least all the formalities have been complied with, we are informed in substance that it had been supposed up to the present time, by the British Home Office, that our law as to trials for other than extradition offences was in agreement with the law of 1870, but finding it to be otherwise, we are confronted with the requirement of a stipulation in order to obtain what is guaranteed by the Treaty of 1842, whereby the United States must recognize the right of the British Parliament by Statute to change existing executory Treaties, and to impose upon this Government conditions and stipulations to which it had not given its assent.

As relates to the particular case of the fugitive Winslow, there is not, so far as I am aware, any intention of trying him for any offence other than those on which indictments were transmitted, and for which his surrender was demanded; but the United States will give no stipulation of which the Treaty does not authorize the demand.

As the stipulation or condition is demanded by Great Britain as a right, the right of the demand must be established.

The President regrets that a condition which, in his judgment, is without any justification under the Treaty, should have been asked. He regards the question thus presented as of a grave and serious character, on the final solution of which must probably depend the continuance of the Extradition Article of the Treaty of 1842. He cannot recognize the right of any other Power to change at its pleasure, and without the assent of the United States, the terms and conditions of an executory agreement, in a Treaty solemnly ratified between the United States and that Power. He thinks that the twenty-seventh Section of the British Act of 1870 was specially intended to exempt the Treaty with the United States from the application of any of the new conditions or provisions embodied in that Act, and to leave that Treaty to be construed, and the surrender of fugitives thereunder to be made, as had been previously done. He hopes that on a further consideration Her Majesty's Government will see, in the section referred to, the effect which he supposes it was designed to have; but he recognizes that it is for the British Government to construe and enforce its own Statutes; and should Her Majesty's Government finally conclude that the British Parliament has attached a new condition to the compliance by that Government of its engagement with the United States, under the tenth Article of the Treaty of 1842, relating to extradition, requiring from the United States stipulations not provided for or contemplated in the Treaty, he will deeply regret the necessity which will thereby be imposed upon him; and he does not see how he can avoid regarding the refusal by Great Britain to adhere to the provisions of the Treaty as they have been reciprocally understood and construed from its date to the present time, or the exaction by that Government of a condition heretofore unknown, as the infraction and termination of that provision of the Treaty.

You are not authorized to enter into any stipulation or understanding as to the trial of Winslow, in case he be delivered up to justice. His surrender is asked under and in accordance with the provisions of the tenth Article of the Treaty between the United States and Great Britain of the 9th of August, 1842. He is charged with a crime included within the list of crimes enumerated in the Treaty; that crime was committed within the jurisdiction of the United States, and he has sought an asylum, and been found, within the territories of Great Britain, and the United States have produced such evidence of his criminality, as, according to the laws of Great Britain, would justify his apprehension and commitment for trial if the crime or offence had been committed in Great Britain.

You will communicate the substance of this to Lord Derby, and, should he desire it, you may read it to him.

I am, &c.  
(Signed) HAMILTON FISH.

## No. 170.

*Colonel Hoffman to the Earl of Derby.—(Received May 1.)*My Lord, *Legation of the United States, London, May 1, 1876.*

REFERRING to your note of the 11th April, and to mine of the 20th, I have the honour to request that your Lordship will take such steps as shall lead to the detention of the fugitive Winslow in custody until I shall have received your Lordship's answer to my note, and have had time to communicate it to Mr. Fish, and to receive his instructions in reply.

I make this request in the interest of justice, and with the earnest hope that means may be found of settling the question unfortunately in dispute between our two Governments, and of thus preserving the Treaty, and of avoiding the turning of great criminals loose upon society to recommence their career of crime.

I have, &amp;c.

(Signed) WICKHAM HOFFMAN.

## No. 171.

*Lord Tenterden to Mr. Liddell.*Sir, *Foreign Office, May 1, 1876.*

WITH reference to my letter of the 25th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a further note from the United States' Chargé d'Affaires at this Court in regard to the case of E. D. Winslow.\*

I am, &amp;c.

(Signed) TENTERDEN.

## No. 172.

*The Earl of Derby to Colonel Hoffman.*Sir, *Foreign Office, May 1, 1876.*

I HAVE the honour to acknowledge the receipt of your note of this day's date, requesting that steps may be taken for the detention of the fugitive Winslow, in custody for a further period, and I beg leave to state to you, in reply, that I have referred your note to Her Majesty's Secretary of State for the Home Department.

I am, &amp;c.

(Signed) DERBY.

## No. 173.

*Sir E. Thornton to the Earl of Derby.—(Received May 1.)*(Telegraphic.) *Washington, May 1, 1876.*

MR. FISH requests me to convey to your Lordship the regret of the United States' Government that it is out of its power to give the assurance which you stated in your note of the 29th ultimo to Colonel Hoffman would be required by Her Majesty's Government before they can give up Winslow and the other prisoners.

## No. 174.

*Lord Tenterden to Mr. Liddell.*Sir, *Foreign Office, May 2, 1876.*

WITH reference to your letter of the 29th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a note from Colonel Hoffman,† forwarding a copy of Mr. Fish's despatch, on which Colonel

\* No. 170.

† No. 169.



Hoffman's note of the 20th ultimo respecting the Winslow extradition case was founded.

I am at the same time to forward a copy of a telegram from Sir E. Thornton, reporting Mr. Fish's reply as to the assurance required by Her Majesty's Government.\*

I am, &c.

(Signed) TENTERDEN.

No. 175.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, May 2, 1876.*

I HAVE the honour to acknowledge the receipt of your note of the 29th ultimo, forwarding a copy of Mr. Fish's despatch on which your note to me of the 20th ultimo respecting the extradition of Winslow was founded.

I am, &c.

(Signed) DERBY.

No. 176.

*Mr. Liddell to Lord Tenterden.—(Received May 2.)*

My Lord,

*Whitehall, May 2, 1876.*

IN transmitting to you the inclosed copy of a notice just received from Messrs. Wontner and Sons, solicitors, of an application to be made to-morrow at 12 o'clock to a Judge at Chambers, for the issue of a Writ of *Habeas Corpus* in the case of Ezra Dyer Winslow, I am directed by Mr. Secretary Cross to suggest, for the consideration of the Earl of Derby, that a copy of it should be sent at once to Mr. Hoffman, with an intimation that the Secretary of State will endeavour to show cause why the prisoner Winslow should not be set at liberty, but is unable to guarantee the result.

I am, &c.

(Signed) A. F. O. LIDDELL.

Inclosure in No. 176.

*Notice.*

In the High Court of Justice, Queen's Bench Division.

In the matter of Ezra Dyer Winslow, a prisoner in the House of Detention under an Extradition Warrant of Commitment.

WE hereby give you notice that we shall to-morrow at 12 o'clock apply to a Judge at Chambers, by Counsel, for an order for the discharge of the above-named Ezra Dyer Winslow, or for a Writ of *Habeas Corpus* directing the Governor of the House of Detention, Clerkenwell, in the county of Middlesex, to bring up the body of Ezra Dyer Winslow, in order that he may be discharged from custody, he having been in custody under an extradition warrant of committal since 3rd March last.

Dated this 2nd day of May, 1876.

Yours, &c.

(Signed) WONTNER AND SONS,  
3, Cloak Lane, Cannon Street, Solicitors for the said  
Ezra Dyer Winslow.

No. 177.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, May 2, 1876.*

WITH reference to my letter of yesterday, I have the honour to inclose for your information a copy of a notice just received from the Home Office, which has been addressed to that Department by Messrs. Wontner and Sons, solicitors, stating that an application will be made to-morrow at 12 o'clock to a Judge at Chambers for the issue of a Writ of *Habeas Corpus* in the case of E. D. Winslow.\*

In forwarding this notice the Secretary of State for the Home Department has informed me that he will endeavour to show cause why the prisoner should not be set at liberty, but that he is unable to guarantee the result.

I am, &c.  
(Signed) DERBY.

No. 178.

*Lord Tenterden to Mr. Liddell*

Sir,

*Foreign Office, May 2, 1876.*

I AM directed by the Earl of Derby to transmit to you the accompanying draft to Colonel Hoffman,† which has been prepared in accordance with your letter of the 29th ultimo respecting the extradition of Winslow; and I am to request that, in laying the same before Mr. Secretary Cross, you will move him to cause Lord Derby to be informed whether this draft meets with his concurrence, or whether he considers that any alterations or additions should be made in it in consequence of the despatch from Mr. Fish, communicated by Colonel Hoffman on the 1st instant, and of which a copy was inclosed in my other letter of to-day's date.

I am, &c.  
(Signed) TENTERDEN.

No. 179.

*Mr. Liddell to Lord Tenterden.—(Received May 3.)*

My Lord,

*Whitehall, May 3, 1876.*

WITH reference to my letter of yesterday, stating that notice had been received by the Secretary of State from the solicitors of Winslow, announcing their intention to apply, under the provisions of the "Extradition Act, 1870," to a Judge at Chambers for the prisoner's release, I am directed by Mr. Secretary Cross to acquaint you, for the information of the Earl of Derby, that the said application was made this morning to Mr. Baron Pollock, and that Her Majesty's Attorney-General having appeared on the part of the Crown, and stated that negotiations were still pending between the Government of the United States and Her Majesty's Government in the case, the learned Judge adjourned the hearing of the application for ten days.

I am, &c.  
(Signed) A. F. O. LIDDELL.

P.S.—A copy of a Report which has just been received from the Solicitor of the Treasury respecting the result of the application to the Judge in Chambers for Winslow's release is inclosed for Lord Derby's information.

A. F. O. L.

Inclosure in No. 179.

*Mr. Stephenson to Mr. Liddell.*

Sir,

*Solicitor's Department, Treasury, May 3, 1876.*

REFERRING to the directions verbally given to me yesterday evening by Mr. Liddell that I should attend at Judges Chambers at 12 o'clock this day and

\* Inclosure in No. 176.

† No. 186.



oppose, on behalf of the Home Secretary, the application to be made on behalf of E. D. Winslow (now in custody under an extradition warrant) for his discharge, notice of which application having been given by Messrs. Wontner in the document then handed to me and herewith returned.

I beg to report that I instructed the Attorney-General and attended with him before Mr. Baron Pollock, sitting as a Judge of the Queen's Bench Division at Chambers this day.

The application was supported by Counsel, who contended that Winslow having been in custody on a warrant of committal since the 3rd of March was entitled to his discharge this day (3rd May) under the 12th Section of 33 and 34 Victoria, cap. 52, quite irrespective of any negotiations or correspondence which might now be going on between this Government and that of the United States as to the effect of the Ashburton Treaty; that the provision in Section 3, Subsection 2 of the Act of 1870, that a fugitive criminal shall not be surrendered unless provision is made "by arrangement" as is therein described, refers to the same "arrangement" as is mentioned in Section 2, *i.e.*, an arrangement "cited and embodied" in an Order in Council, and not to any "arrangement" to be negotiated with respect to any particular criminal on any particular occasion.

The Attorney-General read to the Judge the letter of the 1st May from Colonel Hoffman to Lord Derby (herewith returned), and asked that time might be given to continue the negotiations between the two Governments, which that letter shows are now in progress, stating that the contention of Her Majesty's Government was that a criminal could not, under the Treaty, be surrendered except on the assurance that he should only be tried for the crime (in this case forgery and uttering) for which he was surrendered, and that this contention was in favour of liberty, and asked that the present application should be adjourned for ten days, by which time he (the Attorney-General) was of opinion that the question between the Governments would be settled one way or another.

The Judge declined to express any opinion on the questions raised on the construction of the Statute or as to the effect of the Treaty, and declined also to refer the application (having been asked by the applicant to do so) to the full Court, and said that he did not dismiss or refuse the application, but in the exercise of his discretion adjourned the hearing of it for ten days, making an endorsement to that effect on the brief of the applicant's Counsel.

The applicant's Counsel asked that notice of any decision come to by Her Majesty's Government before the ten days had elapsed should be given to the applicant's solicitors.

I am, &c.  
(Signed) A. K. STEPHENSON.

No. 180.

*Lord Tenterden to Colonel Hoffman.*

Sir,

*Foreign Office, May 3, 1876.*

WITH reference to my letter of yesterday's date, I have the honour to inform you that an application was made this morning before Baron Pollock by Winslow's solicitor for his release, but that on a statement from Her Majesty's Attorney-General that negotiations on the subject were going on between Her Majesty's Government and the United States' Government, the Judge remanded the case for ten days.

I am, &c.  
(Signed) TENTERDEN.

No. 181.

*Colonel Hoffman to the Earl of Derby.—(Received May 3.)*

My Lord,

*Legation of the United States, London, May 3, 1876.*

REFERRING to our correspondence upon the subject of Winslow, and especially to my note of the 20th instant, I have the honour to call your Lordship's attention to

two recent decisions in Canada, which have been sent me by Mr. Fish, with instructions to communicate them to you.

Your Lordship will perceive that the conclusions reached by the Canadian Courts in both cases appear fully to agree with the position taken by the United States Government in this matter.

I have, &c.  
(Signed) WICKHAM HOFFMAN.

Inclosure 1 in No. 181.

*Mr. Dart to Mr. Cadwalader.*

(Extract.)

*Montreal, April 18, 1876.*

SOME months since one Charles Worms was arrested in this city upon a warrant issued by Mr. Justice Ramsay, of the Queen's Bench, charged with the crime of forgery in the city of Philadelphia, a hearing was had, and said Worms was remanded for extradition. His Counsel sued out a writ of *habeas corpus* returnable before Chief Justice Dorien, when a hearing was had, and all the points were raised in arguments that are now pending, as I understand it, between our own and the British Government.

The case attracted considerable attention, and our Judges all consulted in reference to it. Chief Justice Dorien decided that Worms should be remanded for extradition; that the Imperial Act of 1870 did not apply to the Ashburton Treaty, and if it did apply in terms it could not be operative against the Treaty, and that when the prisoner was in the jurisdiction of the United States he could be tried for any offence.

An appeal was taken in Worms' case to the Supreme Court of the Dominion of Canada, which does not sit until next June. An appeal in such cases being allowed by the Act creating the Supreme Court, and Mr. Justice Dorien declined to hold that Act unconstitutional. The Minister of Justice, Honourable Edward Blake, was applied to to extradite said Worms notwithstanding such appeal, and he issued his warrant for that purpose, sustaining, as I understand it, all the points contended for by the American Government in this controversy.

Yesterday Worms was surrendered to the American officer, and is now in the United States.

Inclosure 2 in No. 181.

IN the case of Rosenbaum, whose extradition was asked from Canada, January 14, 1874, on a charge of arson, and the warrant for whom was issued in January, 1874, the question that the British Act of 1870 applied was raised and discussed, as well as the general question of the right to try an offender for any offence other than the extradition crime. The Court examined this ground assumed by the Counsel, and reference was made to the arguments and judgment in the previous case of Bouvie in the Queen's Bench. The prisoner was committed for extradition, and in so doing Ramsey, J., said—

"Notwithstanding the plausibility of this reasoning, it fails to convince me. In the first place it goes too far, for if it were recognized as a principle of International Law that a prisoner extradited could only be tried for the crime for which the extradition took place, it would not have been necessary for the Imperial Parliament to make these provisions, and it would not be necessary to ask this question. I am not, however, aware that it has ever been laid down in England that a man once within the jurisdiction of English Courts could set up the form of his arrest, or the mode by which he came into custody, as a reason for his discharge when accused of a crime. But even were this otherwise, it is not the International Law that it is sought to prove, but the special requirement of a new statute. Now I cannot conceive how a new provision of the Act of 1870 could be consistent with the Treaties with France, the United States, and Denmark, entered into years before."



## No. 182.

*Mr. Liddell to Lord Tenterden.—(Received May 4.)*

Sir,

*Whitehall, May 3, 1876.*

I AM directed by Mr. Secretary Cross to return to you the inclosed draft of a proposed letter from your Department to Colonel Hoffman respecting the extradition of Ezra D. Winslow,\* and to request that you will convey to the Earl of Derby Mr. Cross's approval of the draft as altered.

Mr. Cross desires to add that since my letter of the 29th ultimo, upon which the draft is based, was written, he has received a copy of the actual despatch of Mr. Fish to Colonel Hoffman of the 31st March, 1876, and he observes that Mr. Fish, in alluding to Lawrence's case, says that although not arraigned on any other indictment than for the forgery for which he was extradited, the British Home Office has raised the question that he may be possibly tried upon other charges, and for other crimes.

Mr. Cross has only to remark on this that no question was raised by the Home Office until Mr. Cross was satisfied that Lawrence had been indicted, although not yet arraigned, for the offence of smuggling, and that the Secretary of State in the United States had signified to Sir E. Thornton that the United States' Government claimed the right to try him for other offences than that for which he was surrendered.

I am, &amp;c.

(Signed) A. F. O. LIDDELL.

## No. 183.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, May 4, 1876.*

WITH reference to my letter of the 24th ultimo, I am directed by the Earl of Derby to transmit to you herewith, a copy of a note from the United States' Chargé d'Affaires at this Court, calling attention to recent cases of extradition from Canada;\* and I am to request that, in laying the same before the Earl of Carnarvon, you will move his Lordship to inform Lord Derby what information is in the possession of the Colonial Office in regard to these cases.

I am, &amp;c.

(Signed) TENTERDEN.

## No. 184.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 4, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a note from the United States' Chargé d'Affaires at this Court, calling attention to recent cases of extradition from Canada.†

I am, &amp;c.

(Signed) TENTERDEN.

## No. 185.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, May 4, 1876.*

I HAVE the honour to acknowledge the receipt of your note of the 3rd instant, calling attention to recent cases of extradition from Canada, and I beg leave to acquaint you, in reply, that I have referred the same to Her Majesty's Secretary of State for the Home Department.

I am, &amp;c.

(Signed) DERBY.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, May 4, 1876.*

I HAD the honour of informing you in my note of the 29th ultimo, that Her Majesty's Government having again considered the question of the extradition of Winslow and of the other two persons in custody on the requisition of the United States' Government, had come to the conclusion that it would not be in their power to surrender them unless an assurance were given by the United States' Government that they would not be tried for any other offence than the extradition crimes on which the surrender would be granted, and that the prisoners could not be kept in confinement beyond the dates fixed by law for their detention.

I shall have the honour, in the present note, of informing you of the grounds on which this conclusion was based, and I will first consider the present position of the question as represented in the latter part of your note of the 20th ultimo, in which you state that "in 1842 a Treaty for the surrender of fugitive criminals was made between the United States and Great Britain. Under it, for nearly thirty years, fugitives were delivered up on both sides, and tried for crimes not named in the warrant by either party without remonstrance from the other."

While assenting to the first part of this paragraph, Her Majesty's Government take exception to the second, and assert that there is no case within the knowledge of Her Majesty's Government in which a prisoner was surrendered by England for one offence and tried by the United States for a different one. The case of Heilbroun, where it is alleged that a prisoner was surrendered by the United States for one offence and tried for a different one here, was a private prosecution, and no evidence can be found of the attention of the Government having been called to it.

As far, moreover, as the language of the statutes in both countries passed for the purpose of giving effect to the Treaty of 1842 is concerned, it shows that though that Treaty contained no express stipulations on the question of the trial of persons surrendered under it for crimes other than the extradition crimes of which they were accused before the surrendering authorities, the Secretaries of State in either country were only empowered to deliver up extradition prisoners to be tried for the crime for which they been accused in the country delivering. (See 6 and 7 Vict., cap. 76, sec. 3, and Act of Congress, August 1848, cap. 147, sec. 3.)

Her Majesty's Government cannot assent to the proposition that the English Extradition Act of 1870 imposed a new condition upon the Treaty of 1842. They maintain that if that Act had never been passed, it would have been the duty of Her Majesty's Government under the Act 6 and 7 Vict., cap. 76, upon which the Treaty then rested, and the general law of extradition, to have protested against any extradition prisoner being tried in the United States for crimes other than those of which he was accused in this country, and had that protest been disregarded by the Government of the United States the British Government would have been equally bound to require an assurance in any subsequent case that a prisoner would only be tried for the crime or crimes for which he was surrendered.

And while dealing with this part of the case, I would ask how the United States' Government is prepared to reconcile the views expressed in your note in favour of the assertion of the right of asylum for political offences with the principle you have been instructed to advocate.

There is no principle of international law more clearly admitted than that advanced by you that each State is the judge of its own administration of justice, and with regard to the right of asylum for political offences it is clear that the nation surrendering is to be the judge of what is, or is not, a political offence, the more so because opinions differ in different countries on this question.

But if the principle contended for in your note be correct, what is to prevent the United States' Government from claiming a prisoner from this Government for an extradition crime, and trying him afterwards for an offence which in this country would be deemed a political offence, but which in the United States might be viewed under a different aspect. Her Majesty's Government believe that the only test, and the only safeguard for the liberty of the individual and the maintenance of the right of asylum are to be found in the principle for which they contend, that the crime or crimes of which a man is accused in the country surrendering which are proved against him there, and for which he is surrendered, are the only crimes for which he ought to be tried in the country claiming, and that without this safeguard the



liberties of the subjects and citizens of the two nations might be jeopardized and put into the power of political parties or of the vindictiveness of the receiving Government who, *ex concessis*, is not the proper judge of whether a particular offence is a political one or not.

And here I must observe, with reference to your comment on the words "deliver up to justice," that if those words can be construed as having the extended meaning for which you contend, namely, "deliver up to justice generally," there would be no object in having a list of extradition crimes, for which alone an accused person can be claimed, and the construction would be in direct opposition to the Act of Congress of August, 1848, cap. 147, sec. 3, and 6 and 7 Vict., cap. 76, sec. 3, "to be tried for the crime for which he is so accused," the words being identical in both acts.

I now proceed to consider the effect of the Extradition Act of 1870, and I will state at once that Her Majesty's Government do not contend that any of the provisions of that Act have any force or effect in any foreign State. They look upon that Act only as declaratory of the law that is to govern the British Government in the matters to which it refers, and they consider that none of its provisions are inconsistent with the Treaty of 1842, sec. 27. It is to be regarded as intended to prevent for the future the evils that were pointed out by Mr. Hammond and others, as having occurred, and being liable to occur, in private prosecutions, to which the attention of Government had not been called. Her Majesty's Government consider the provisions of the Act as having been devised, not in the particular interests or for the particular ends of Great Britain, but as the embodiment of what was the general opinion of all countries on the subject of extradition, and as being beneficial to all and injurious to none. That the general opinion of European nations has justified this view is proved by the acceptance by most of the leading nations of Europe of Extradition Treaties based upon its provisions.

The attention of the United States' Government was drawn to the provisions of the Act immediately after it became law, as is shown by Sir E. Thornton's communication to Mr. Fish of the 22nd of September, 1870, and it is evident that Mr. Fish's notice was called to the effect of the restrictions of clause 3, sub-section 2, from the question which he shortly afterwards put to Sir E. Thornton, whether it would be possible that a stipulation could be inserted in any new Convention, that if, during the trial of a person whose extradition had been asked for on a minor crime such as larceny, evidence previously unknown should appear that a prisoner had been guilty of a higher crime such as murder, it should be legal to try him for the latter crime. To this question Sir E. Thornton, by instruction from Her Majesty's Government, returned the following answer in writing:—

"That any provision in the Treaty by which a fugitive surrendered for one offence mentioned in the Schedule may be tried for any offence committed prior to his surrender other than the extradition crime for which he was surrendered would be inadmissible. Indeed, the Treaty, if it is to be carried out, must contain a provision exactly to the opposite effect."

The draft of a new Convention between the two countries was afterwards prepared, and Article 6 of that Draft, as it originally stood, was as follows:—

"When any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall not, until he has been restored or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered."

Although much discussion took place on different provisions of this Draft Convention, and considerable alterations and modifications of the original draft were proposed by the United States' Government and adopted by the British Government, not one word of objection was ever raised by the United States' Government to Article VI.

The only proposal made by them with reference to the Article was the addition at the end of it of the words, "No person shall be deemed to have had an opportunity of returning to the country whence he was surrendered until two months at least shall have elapsed after he shall have been set at liberty and is free to return," which was assented to by the British Government. The terms of that Convention were, in fact, with one exception, virtually agreed upon by both Governments; that exception was a difference which arose upon Article VII relating to political offences. The original Article was to the effect that "no accused or convicted person should be surrendered if the offence in respect of which his surrender is demanded shall be deemed by the party upon whom the demand is made to be of a political character, or if he prove to the satisfaction [of the Police Magistrate or of the Police Judge or Commissioner

named in Article III of this Treaty, or of the Court before whom he is brought on *habeas corpus*, or] of the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or to punish him for an offence of a political character."

The United States' Government proposed to leave out the words between brackets, and thus restrict the power of deciding as to what was a political offence to the Secretary of State alone.

To this the British Government could not agree, as the effect would have been to deprive an accused of his right to *habeas corpus*, to take away from him the power of proving at once his right to be set at liberty, and of taking the objection in the first instance before the tribunal before whom he was brought immediately on his arrest. This would be contrary to the spirit of English law, entirely apart from the Extradition Act of 1870, would have been a direct blow to the liberties of persons claiming asylum in this country, would put it in the power of a Secretary of State to keep an accused person in prison who ought to have been set at liberty at once, and who ought to have the opportunity given him of claiming his right to be set at liberty at the very first moment that he was charged before any tribunal. It was for these reasons that the British Government declined to accede to the proposal, and if the rights of an accused, which were well known and established in this country long before the Extradition Act was passed are secured to him, there is not, as far as Her Majesty's Government are aware, any other matter of difference between the two Governments which would prevent that Convention being signed at the present moment. It does not, therefore, appear how in any respect the Act of 1870 erected an insurmountable barrier in the way of a Convention as alleged in your note.

It appears, therefore, that the provisions of the Extradition Act of 1870 and the powers of the British Government under it having thus been clearly brought to the United States' Government, both countries continued without any question mutually to surrender persons accused of crimes within the Treaty of 1842. No case arose in either country to the knowledge of the British Government in which any departure was made from the usual practice, and no prisoner was ever, to the knowledge of the British Government, tried for any offence other than that of which he had been accused in the country surrendering. Her Majesty's Government, therefore, contend that they and their predecessors were justified in considering that by the tacit and implied consent of each country this practice would be continued, and that it was not necessary to ask for any positive arrangement to ensure that object. So convinced was the Secretary of State for the Home Department that this was the case, that when in the first instance his attention was drawn to the intention to try Lawrence for smuggling by the solicitors who had acted for him in this country, the reply given to them was that the Secretary of State could not assume that the Government of the United States in the face of their general understanding and in view of their Act of Congress of August 12, 1848, c. 147, sec. 3, would ever think of acting in a manner so contrary to their own law and to the general law of extradition in all countries as to try an extradition prisoner for any other crimes than the extradition crime of which he had been accused in the country which delivered him up.

On the 9th of December Sir E. Thornton informed Mr. Fish that, as the question had been raised in Lawrence's case, it might be difficult for the British Government to surrender criminals hereafter, unless Her Majesty's Government was assured by that of the United States that the surrendered criminal should be tried only for the crime on which his surrender was demanded; and it cannot, therefore, in fairness be alleged that Her Majesty's Government deferred raising this question until there were three important cases of extradition pending.

With reference to the allusions which you make to the case of Bouvier, it is to be observed that the point decided in that case was that under the provisions of the French Treaty (identical, so far as the point is concerned, with the United States' Treaty), unless it had been proved to the Court that the French law had provided that Bouvier could not be tried for any other offence than that for which he was surrendered, Bouvier could not have been delivered up under the Extradition Treaty with France, which contained no such stipulation.

The attention of Her Majesty's Government has been called to the letter addressed by the Attorney-General of the United States to the District United States' Attorney for the Southern District of New York on the 22nd December, 1875. That letter is as follows :—



"Sir,

"Application is again made to me in the Lawrence case, with a long record, and an opinion of Judge Benedict. I now repeat what I have heretofore written with 'carefulness and urgency,' and what I carefully tried to impress upon you when I saw you there, that for grave political reasons Lawrence must first be tried upon the charge upon which he was extradited, and upon no other, until that trial is ended, and whether subsequent proceedings for other crimes shall or shall not be taken, must await the order of the President. Now, upon an examination of the papers, it is perfectly easy for you and the Court to determine upon what charge Lawrence was extradited, and to proceed to try upon that charge, and that only. This is a matter of great importance, and you must not blunder in it. There are consequences involved in it of a serious nature, as I have already told you, and we want to proceed in strict conformity with international law and international courtesy; therefore, I merely add try him first upon the charge for which he was extradited, and for that only. This instruction is so specific and so definite that it does not seem possible that an honest mistake can be made in this matter."

(Signed)

"EDWARD PIERREPOINT, *Attorney-General.*"

The question then arises whether the United States' Government has, through the Attorney-General, power to stay proceedings in a prosecution which, in his opinion, is contrary to international law and international courtesy. It appears from the last passage of the judgment of Judge Benedict, delivered on the 27th of March last, that the Government has such power by reason of its legal control over the prosecuting officer. In the course of the same judgment, the Judge calls attention to the "political" aspect of the case as distinguished from the "judicial," and this distinction is material to be kept in view when cases are cited to show that Courts have taken a course in one or two cases, without showing that such cases were ever brought to the knowledge of the Governments concerned. This distinction was aptly illustrated in the late case of Blair, who was inveigled by a British subject with the assistance of American officers from the United States, and tried at Liverpool for a fraudulent bankruptcy and sentenced to eighteen months' imprisonment. Mr. Justice Mellor, before whom this man was tried, took the same view as Judge Benedict, that it was not for the Court, before whom a prisoner was brought, to inquire how he came before it. But as soon as the facts were brought to the knowledge of the Government, and inquiry had been made, although it was not clear whether the trick by which Blair was removed from the jurisdiction of the United States was the act of the British subject or of the American officers, the British Government at once released Blair and sent him back to America, paying his expenses to the place from which he had been brought.

In the letter from the United States' Attorney-General, he states, "We want to proceed in strict conformity with international law and international courtesy." What, then, is the international law on the subject? Her Majesty's Government maintain that there is no country in the world which claims the right now put forward by the United States' Government. It will be found that France, which has the longest experience in extradition law and practice, and the largest number of extradition Treaties with other countries, has never claimed such a right, whether there was any stipulation in a Treaty to that effect or not; and that no country can be pointed out which puts forward such a claim.

Her Majesty's Government must, therefore, adhere to the decision which they have maintained from the very first moment that they were assured of the intention of the United States' Government to try Lawrence for other than the extradition crime for which he was surrendered. They have always regarded the claim so to try him as a breach of the Treaty of 1842; and they have nothing to add to the opinion expressed in my notes to General Schenck and yourself, of the 29th of February, and 11th ultimo.

Her Majesty's Government deeply regret that there are two other cases which must follow their decision in regard to the case of Winslow; but they can only interpret Mr. Fish's views, as conveyed in your note of the 20th ultimo, as a distinct assertion of the right of the United States' Government to try Lawrence for any offence whatever, and as a distinct refusal to come to any arrangement that Winslow and the other extradition prisoners now in custody here shall not be treated in a similar manner.

Her Majesty's Government must act as the Law of England and the practice of all other countries require them to act, and can only express their deep regret that the operation of a Treaty which, limited as it was, has worked for the mutual benefit of

both countries, should be in danger of being so unnecessarily terminated. They will not abandon the hope that the United States' Government may yet consent to give such assurances as will enable the two Governments to maintain it unimpaired.

I am, &c.  
(Signed) DERBY.

## No. 187.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, May 5, 1876.*

THE note which I had the honour to address to you under yesterday's date, contained the answer of Her Majesty's Government to the letter which, by direction of your Government, you addressed to me on the 20th instant.

Since my note was prepared, I have received from you a copy of the despatch from Mr. Fish, dated March 31st, on which your letter was founded.

This despatch has been communicated to Her Majesty's Secretary of State for the Home Department, who has requested me to call your attention to the passage in Mr. Fish's despatch, in which, alluding to Lawrence's case, he says that, "although not arraigned on any other indictment than for the forgery for which he was extradited, the British Home Office has raised the question that he may be possibly tried upon other charges and for other crimes."

The Home Secretary wishes to observe upon this that no question was raised by him until he was satisfied that Lawrence had been indicted, although not yet arraigned, for the offence of smuggling, and that Mr. Fish had signified to Sir E. Thornton that the United States' Government claimed the right to try him for other offences than that for which he was surrendered.

Information to this effect was received from Her Majesty's Minister at Washington on the 28th of November.

I am, &c.  
(Signed) DERBY.

## No. 188.

*Mr. Liddell to Lord Tenterden.—(Received May 6.)*

Sir,

*Whitehall, May 5, 1876.*

I AM directed by Mr. Secretary Cross to acknowledge the receipt of your letter of the 4th instant, forwarding a copy of a note from the United States' Chargé d'Affaires at this Court, calling attention to recent cases of extradition from Canada.

In reply I am to acquaint you, for the information of the Earl of Derby, that Mr. Cross has nothing to add to his former opinion upon the case of Winslow, except that he differs from the opinion of the Canadian Judges, and he would point to a different decision in the "Lennie" mutineers case heard yesterday at the Old Bailey, where Mr. Justice Brett held that a prisoner delivered up under the French Extradition Treaty for murder could not be put on his trial for being an accessory after the fact.

Mr. Cross would also refer to the views already expressed as to the distinction to be drawn in these cases between that which is in the province of Courts, and that which belongs more properly to Governments to decide.

I am, &c.  
(Signed) A. F. O. LIDDELL.

## No. 189.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, May 6, 1876.*

I REFERRED to Her Majesty's Secretary of State for the Home Department your note of the 3rd instant, in which you called attention to some recent cases of extradition from Canada, and I have the honour to state to you that I have been



informed in reply that the Home Secretary has nothing to add to his former opinion upon the case of Winslow, except that he differs from the opinion of the Canadian Judges in the cases referred to, and that he would wish your attention to be called to a different decision in the case of the "Lennie" mutineers heard yesterday at the Old Bailey, where Mr. Justice Brett held that a prisoner delivered up under the French Extradition Treaty for murder could not be put on his trial for being an accessory after the fact.

I beg leave also to refer you to the views already expressed in my note of the 4th instant as to the distinction to be drawn in these cases between that which is within the province of Courts and that which belongs more properly to Governments to decide.

I am, &c.  
(Signed) DERBY.

No. 190.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 6, 1876.*

WITH reference to your letter of the 3rd instant I am directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a note which his Lordship addressed to the United States' Chargé d'Affaires at this Court on the 4th instant in regard to the recent extradition cases.\*

I am, &c.  
(Signed) TENTERDEN.

P.S.—I am also to inclose a copy of a further note to Colonel Hoffman on the same subject.†

T.

No. 191.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 6, 1876.*

WITH reference to your letter of the 3rd instant, relative to the postponement for ten days by Baron Pollock of the hearing of the application for the release of Winslow, I am directed by the Earl of Derby to request you to suggest, for Mr. Secretary Cross' consideration, that it might be advisable to telegraph to Sir E. Thornton to mention unofficially to Mr. Fish that if nothing is done in the way of giving the assurance required in Winslow's case before the ten days for which he is remanded expire, it is not likely that the Judge will be willing to grant any further postponement of the prisoner's release.

I am, &c.  
(Signed) TENTERDEN.

No. 192.

*Mr. Liddell to Lord Tenterden.—(Received May 8.)*

My Lord,

*Whitehall, May 6, 1876.*

WITH reference to your Lordship's letter of the 6th instant, I am directed by Mr. Secretary Cross to acquaint you that he concurs with the Earl of Derby in thinking that it would be advisable to direct Sir E. Thornton by telegram to inform Mr. Fish confidentially that in all probability, when the ten days have expired to which the application for the release of Ezra D. Winslow was adjourned, the Judge will not allow any further postponement, and will direct him to be set at liberty.

Mr. Cross would suggest that this telegram should be sent at once.

I have, &c.  
(Signed) A. F. O. LIDDELL.

No. 193.

*The Earl of Derby to Sir E. Thornton.*

(Telegraphic.)

*Foreign Office, May 6, 1876.*

TELL Mr. Fish unofficially, that unless some step be taken towards giving the requisite guarantee in Winslow's case before the period of ten days during which he stands remanded has elapsed, it is very doubtful whether a further delay in releasing the prisoner will be granted by the Judge.

No. 194.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, May 6, 1876.*

I TRANSMIT to you herewith, for your information, copies of correspondence, in regard to the recent extradition cases.\*

I am, &amp;c.

(Signed) DERBY.

No. 195.

*Sir E. Thornton to the Earl of Derby.—(Received May 7.)*

My Lord,

*Washington, April 24, 1876.*

WHEN I saw Mr. Fish at the State Department, on the 20th instant, he told me that, judging from information which he had received from the United States' Chargé d'Affaires in London, he presumed that the Xth Article of the Treaty of 1842 must now be considered to be at an end; he regretted very much that it should be so, but his Government found it impossible to agree to the condition required by that of Her Majesty that an engagement should be given by the United States' Government that the accused Winslow should not be tried for any other crime than that for which he would be surrendered.

Mr. Fish then read me several extracts from a despatch addressed by him to the United States' Chargé d'Affaires, the contents of which had, as he said, been communicated to your Lordship, and which it is, therefore, unnecessary to repeat.

Mr. Fish said that there were in England at this moment two men accused of murder, and two others charged with forgery in the United States, whose surrender he had been requested to ask of Her Majesty's Government; but that under the present circumstances he had considered it useless to apply for their extradition.

He expressed his great regret that there would hereafter be no means of reaching the mutual surrender of criminals, but added that the Government of the United States would always be prepared to conclude a new Treaty of Extradition, if it could be possible to agree upon its terms. He feared, however, that this would be difficult, unless the British Parliament would consent so to modify Subsection 1 of Section 3 of the Act of 1870, as to leave the Government solely responsible as to what was to be considered a political crime.

On the morning of the 22nd instant, I received from Mr. Fish a memorandum referring to two cases in Canada, with regard to which the Judicial authorities had decided that the Act of Parliament of 1870 would not apply to the Treaty of 1842, "and that when the prisoner was within the jurisdiction of the United States he could be tried for any offence."

I have the honour to inclose a copy of the Memorandum.

I have, &amp;c.

(Signed) EDWD. THORNTON.



## Inclosure in No. 195.

*Memorandum.*

IN the case of Rosenbaum, whose extradition was asked from Canada, January 14, 1874, on a charge of arson, and the warrant for whom was issued in January, 1874, the question that the British Act of 1870 applied was raised and discussed, as well as the general question of the right to try an offender for any offence other than the extradition crime. The Court examined this ground assumed by the prisoner's Counsel, and reference was made to the arguments and judgment in the previous case of Bouvier in the Queen's Bench. The prisoner was committed for extradition and in so doing, Ramsay, J., said :—

“Notwithstanding the plausibility of this reasoning, it fails to convince me. In the first place it goes too far, for if it were recognized as a principle of International Law that a prisoner extradited could only be tried for the crime for which the extradition took place, it would not have been necessary for the Imperial Parliament to make these provisions, and it would not be necessary to ask this question. I am not, however, aware that it has ever been laid down in England that a man once within the jurisdiction of English courts, could set up the form of his arrest, or the mode by which he came into custody, as a reason for his discharge, when accused of a crime. But even were this otherwise, it is not the International Law that it is sought to prove, but the special requirement of a new statute. Now I cannot conceive how a new provision of the Act of 1870 could be consistent with the Treaties with France, the United States, and Denmark, entered into years before.”

In the case of Charles Worms, whose extradition was asked February 21, 1876, on a charge of forgery, and who was within a very few days past extradited from Canada, a hearing was had, and the prisoner remanded for extradition; a writ of *habeas corpus* was sued out and a hearing had before Chief Justice Dorian, on which, as it is stated, on the authority of the Consul-General of the United States at Montreal, all the points were raised in the argument that are now pending between the United States and Great Britain, and all the Canadian Judges consulted in reference to it.

“Chief Justice Dorian decided, as it is reported to me, that Worms should be remanded for extradition; that the Imperial Act of 1870 did not apply to the Ashburton Treaty, and if it did apply in terms, it could not be operative against the Treaty; and that when the prisoner was in the jurisdiction of the United States, he could be tried for any offence.”

## No. 196.

*The Earl of Derby to Sir E. Thornton.*

Sir,

Foreign Office, May 7, 1876.

I HAVE received your telegram of yesterday's date reporting that you have received a note from Mr. Fish, in which he requests that the note addressed to me on the 20th ultimo by Colonel Hoffman respecting the Winslow extradition case may be considered as withdrawn, because it contains expressions, opinions, and arguments not adopted nor approved by the United States' Government, and that the despatch of Mr. Fish to Colonel Hoffman, which was forwarded to me on the 29th (not the 28th) instant, should be substituted for the above-mentioned note.

Her Majesty's Government have learnt with satisfaction that it is the desire of Mr. Fish to withdraw the note of the 20th ultimo. They have done their utmost, by procuring the remand of Winslow, to afford an opportunity for arranging the disputed question of extradition in this case, and they are anxious to know whether they may understand the withdrawal of Colonel Hoffman's note as an indication on the part of Mr. Fish of an intention to endeavour to arrive at some satisfactory arrangement.

In the answer which I addressed to Colonel Hoffman on the 4th instant, after the copy of Mr. Fish's despatch had been received, I explained that Her Majesty's Government do not rest their case on the Act of 1870, but on the general principles of extradition, the language of the Statutes of both countries putting the Treaty of 1842 in force, and the care taken to specify in the Treaty the particular crimes for which extradition can be granted.

I communicated the substance of this despatch to you by telegraph.

I am, &amp;c.

(Signed)

DERBY.

## No. 197.

*Sir E. Thornton to the Earl of Derby.—(Received May 8.)*

(Telegraphic.)

*Washington, May 8, 1876.*

REFERRING to your telegram of yesterday, Mr. Fish is of opinion that the position of the United States' Government is not realised by Her Majesty's Government, and that the latter fails to appreciate how thoroughly powerless the former is to hinder, had they the wish to do so, State Courts from putting persons on trial for crimes other than those for which they may have been delivered up. The substitution of Mr. Fish's despatch dated the 31st of March, for Colonel Hoffman's note, does not imply that the guarantee desired by Her Majesty's Government will be given by the United States' Government, and I am persuaded that this guarantee will be withheld.

## No. 198.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 8, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a despatch from Her Majesty's Minister at Washington, in regard to the recent cases of extradition.\*

I am, &amp;c.

(Signed) TENTERDEN.

## No. 199.

*Colonel Hoffman to the Earl of Derby.—(Received May 8.)*

My Lord,

*Legation of the United States, London, May 8, 1876.*

REFERRING to my note of the 20th ultimo, I have the honour to inform you that on receiving a copy of it, which I forwarded immediately, Mr. Fish regrets to find that, in the hurry of preparation, expressions of opinion and arguments have crept in which my Government does not adopt or approve. He therefore requests that my note may be considered as withdrawn, and that the instruction to me in his despatch of March 31st, of which I had the honour to send a copy to your Lordship on the 27th April, be considered as substituted therefor.

I have, &amp;c.

(Signed) WICKHAM HOFFMAN.

## No. 200.

*Sir E. Thornton to the Earl of Derby.—(Received May 9.)*

(Telegraphic.)

*Philadelphia, May 9, 1876.*

THE Washington newspapers of to-day contain the despatch addressed to Colonel Hoffman by Mr. Fish on the 31st of March.

## No. 201.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 9, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, copies of correspondence in regard to the recent extradition cases.†

I am, &amp;c.

(Signed) TENTERDEN.

\* No. 195.

\* Nos. 197 and 199.



No. 202.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 10, 1876.*

I AM directed by the Earl of Derby to request that you will inform Mr. Secretary Cross that a telegraphic despatch has been received from Her Majesty's Minister at Washington, stating that Mr. Fish's despatch to Colonel Hoffman of the 31st of March, respecting the recent extradition cases, was published in the Washington newspapers of the 9th instant.

I am, &amp;c.

(Signed) TENTERDEN.

No. 203.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, May 10, 1876.*

I HAVE the honour to acknowledge the receipt of your note of the 8th instant, stating that Mr. Fish requests that your note of the 20th instant may be considered as withdrawn, and that his despatch of the 31st of March, which was forwarded to me in a note from you, dated the 29th (not 27th) ultimo may be substituted for it.

I am, &amp;c.

(Signed) DERBY.

No. 204.

*Mr. Liddell to Lord Tenterden.—(Received May 11.)*

My Lord,

*Whitehall, May 11, 1876.*

I AM directed by Mr. Secretary Cross to request that the Earl of Derby may be informed that the Attorney-General will be instructed to ask for a further postponement of Winslow's release when the next application is made to the Judge on the expiration of the ten days' postponement granted by the Judge when the former application for his release was made.

Mr. Cross is most anxious that every effort should be made by the British Government to keep alive the possibility of coming to an arrangement with the United States' Government on the extradition question now pending between them; and the ground on which the Judge will be asked for a further postponement will be that there has not yet been time for Mr. Fish to have received the answer sent by the British Government to his despatch of the 31st of March.

Whether the Judge will accede to the application or not, Mr. Cross is unable to say.

Mr. Cross can only express again his extreme regret that there should be any risk of a cessation of the satisfactory working of the Extradition Treaty with the United States, which has been of such mutual benefit to both countries.

I am, &amp;c.

(Signed) A. F. O. LIDDELL.

No. 205.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, May 11, 1876.*

THE postponement of the hearing of the application for the discharge of the prisoner Winslow from custody will expire on the 13th instant, and as I have this day informed you by telegraph the Attorney-General has been instructed to apply for a further postponement.

Her Majesty's Government are anxious to make every effort to keep alive the possibility of coming to an arrangement with the United States' Government in regard to the question of extradition, and the Attorney-General will base his application on

the ground that there has not been time for Mr. Fish to receive the note which I addressed to Colonel Hoffman on the 4th instant, and which contains the reply of Her Majesty's Government to Mr. Fish's despatch of the 31st of March.

Her Majesty's Secretary of State for the Home Department is unable to say whether the Judge will grant the application for a further remand, but he has expressed his extreme regret at the risk of the cessation of the satisfactory working of the Treaty of Extradition which has been of such great mutual benefit to both countries.

I am, &c.

(Signed) DERBY.

No. 206.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, May 11, 1875.*

WITH reference to my letter of the 3rd instant, acquainting you that Winslow's case had been remanded for ten days on the application of the Attorney-General, I have the honour to state to you that I have been informed by Her Majesty's Secretary of State for the Home Department that the Attorney-General will be instructed to ask for a further postponement of Winslow's release when the next application is made to the Judge on the expiration of the postponement granted when the former application was made.

Her Majesty's Government are most anxious that nothing should be wanting on their part to keep alive the possibility of coming to an arrangement with the United States' Government on the extradition question now pending between them, and the ground on which the Judge will be asked for a further postponement will be that there has not yet been time for Mr. Fish to have received the answer to his despatch of the 31st of March, which was sent to you on the 4th instant.

The Home Secretary is, of course, unable to say whether the Judge will accede to this application, but, in notifying that it will be made, he has expressed his extreme regret that there should be any risk of a cessation of the satisfactory working of the Extradition Treaty of 1842, which has been of such great mutual benefit to both countries.

I am, &c.

(Signed) DERBY.

No. 207.

*Colonel Hoffman to the Earl of Derby.—(Received May 12.)*

My Lord,

*Legation of the United States, London, May 12, 1876.*

I HAVE the honour to acknowledge the receipt of your note of the 4th instant, and to inform you that I forwarded a copy of it to Mr. Fish on the 6th.

I have also the honour to acknowledge the receipt of your Lordship's note of the 11th, and to say that I shall forward a copy of it to Washington by to-morrow's mail.

Both these notes relate to the case of Winslow.

I have, &c.

(Signed) WICKHAM HOFFMAN.

No. 208.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 12, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a despatch which his Lordship has addressed to Her Majesty's Minister at Washington, regarding the recent extradition cases.\*

I am, &c.

(Signed) TENTERDEN.



No. 209.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, May 13, 1876.*

WITH reference to my note of the 11th instant, I have the honour to acquaint you that the further hearing of the application for the release of Winslow has been adjourned for ten days from this date.

I am, &c.  
(Signed) DERBY.

No. 210.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 13, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, copies of correspondence in regard to the recent cases of extradition.\*

I am, &c.  
(Signed) TENTERDEN.

No. 211.

*Mr. Liddell to Lord Tenterden.—(Received May 13.)*

My Lord,

*Whitehall, May 13, 1876.*

REFERRING to previous correspondence, I am directed by Mr. Secretary Cross to transmit to your Lordship, to be laid before the Earl of Derby, the accompanying copy of a letter from the Solicitor of the Treasury, stating that, upon the application of the Attorney-General, who attended under the instructions of the Secretary of State, the learned Judge, Mr. Baron Amphlett, postponed the hearing of the application for the release of Ezra D. Winslow for ten days from to-day's date.

I am, &c.  
(Signed) A. F. O. LIDDELL.

Inclosure in No. 211.

*Mr. Stephenson to Mr. Liddell.*

Sir,

*Solicitor's Department, Treasury, May 13, 1876.*

REFERRING to your letter of the 11th May, requesting me to instruct the Attorney-General to appear before the Judge at Chambers, and apply for a further postponement of the application for the release of Winslow, I beg to report that the Attorney-General attended at Chambers before Mr. Baron Amphlett this day, and produced a letter from the American Chargé d'Affaires of yesterday's date, addressed to Lord Tenterden, acknowledging the receipt of his Lordship's note of the 4th instant, and informing him that he (Colonel Hoffman) had forwarded a copy of it to Mr. Fish on the 6th.

Mr. Baron Amphlett thereupon adjourned the hearing of the application for the release of Winslow for a further ten days from this date.

I am, &c.  
(Signed) A. K. STEPHENSON.

No. 212.

*The Earl of Derby to Sir E. Thornton.*

Sir,

Foreign Office, May 13, 1876.

I TRANSMIT to you, herewith, for your information, copies of correspondence in regard to the recent cases of extradition.\*

I am, &c.  
(Signed) DERBY.

No. 213.

*Sir E. Thornton to the Earl of Derby.—(Received May 14.)*

My Lord,

Washington, May 1, 1876.

ON my visiting Mr. Fish at the State Department on the 27th instant, he asked me whether I supposed that Her Majesty's Government would finally surrender the forger Winslow. I replied that its action would depend entirely upon whether the Government of the United States would give an assurance that Winslow would be tried only for the crimes for which he had been committed. Mr. Fish said that it was out of the power of the United States' Government to give such an assurance, because there was no stipulation to that effect in the Xth Article of the Treaty of 1842, and this being the case, the Government could not control the action of the Courts of Justice, who could only take the letter of the Treaty as their guide.

Mr. Fish begged me to assure your Lordship that the United States' Government sincerely regretted that the reciprocal extradition of criminals, which had hitherto been carried out with such good results, should thus come to an end; but he hoped that your Lordship would believe that he wished to look at the matter in a friendly spirit, and would meet the United States' Government with similar feelings in its desire to negotiate a new Treaty upon the subject of extradition.

With this view he wished to point out to me, "informally and unofficially," as he said, some of the provisions of the Act of 1870, which, unless modified, would render it extremely difficult for the United States to conclude a Treaty upon the subject.

In examining the Act in question, it must first be observed that, by the second paragraph of section 2, Her Majesty was empowered, in case an arrangement should have been made with a foreign State, to limit the operation of the Order in Council directing that the Act should apply in the case of that State, and to "render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient." It appeared to Mr. Fish that this provision authorized the Queen to modify and alter the terms of a Treaty concluded with a foreign State, and as any Treaty would now be concluded with a knowledge of the Act, he did not see how the United States could consent to such a power of limitation. I assured him that a Treaty could not be modified or altered without the consent of both parties, and that the Act could not confer such a power upon Her Majesty.

With regard to sub-section 1 of Section 3, Mr. Fish said that it would be out of the power of the Government of the United States to agree that a police magistrate, either in Great Britain or the United States, should be considered a sufficient judge of what was a political crime, and that it was necessary that on both sides the Government alone should take the responsibility of deciding the question. But upon a more careful examination of the language of the Act, it seemed to him that it was not incompatible with this view of the matter. The Act, he said, stated that the criminal might prove, "to the satisfaction of the police magistrate or the Court before whom he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender, &c." Mr. Fish expressed his opinion that, in making a Treaty with a foreign State, Her Majesty's Government had a right to choose to which of the three, viz., the police magistrate, or the Court, or the Secretary of State, the fugitive criminal should prove the fact of his surrender being demanded, with a view to try or punish him for an offence of a political character. If Her Majesty's Government should take the same view of sub-section 1, that of the United States would be glad to agree that the Secretary of State should decide whether the offence was one of a political nature.

\* Nos. 199, 206, 267, and 209.



With reference to sub-section 2 of section 3, Mr. Fish said that his Government certainly thought it expedient that there should be a limitation to the crimes for which a surrendered criminal might be tried, but that it had become convinced, during the discussion and consideration of the late cases of Lawrence, Winslow, &c., that the United States ought not, for the future, to make an Extradition Treaty with a foreign Power unless it were stipulated that a surrendered criminal, even when committed for only one crime, might be tried for all and any one of the crimes included in that Extradition Treaty, although for no others. He could not see that any objection could be made to such a stipulation; he thought that the principal object of Extradition Treaties was to take care that no surrendered criminal should be tried for a political crime, and that certain stated high crimes should not go unpunished by reason of the escape of the criminal.

It seemed, in accordance with reason, that, where two Governments had agreed upon reciprocal extradition for certain crimes, the surrendered criminal should be liable to be tried for any one or more of those crimes. He believed that in most, if not in all of the States of the Union, a man indicted for murder might, if acquitted of murder, be convicted of manslaughter, and that the same rule was observed in Great Britain; yet if a murderer were surrendered by Great Britain to the United States, he could not, in accordance with the Act of 1870, be convicted of manslaughter if acquitted of murder. In the case of Lawrence he had understood that Lawrence had been indicted for thirteen different forgeries, and that the documents with regard to all of them had been sent to England, but that the facts connected with only one of these had been proved, it being supposed that he could, on arriving in the United States, be tried for all of them, but that his extradition could have been equally obtained upon all of the indictments.

Mr. Fish submitted to me a further difficulty with regard to the wording of the Act of 1870, in which he seemed to me to have strained its interpretation, but upon which, however, he laid great stress. He argued that the wording of sub-section 2 of section 3 laid down that, in the United States, the surrendered criminal could be tried for no offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded. He asserted that these words meant that he could be tried for only one crime, whereas by the 19th section a fugitive criminal surrendered to England could be tried for "such of the said crimes as may be proved by the facts on which the surrender is grounded," meaning, as he argued, that he could be tried for any number of the crimes described in the first schedule to the Act, and thus implying an absence of reciprocity.

I have, &c.

(Signed) EDWD. THORNTON.

No. 214.

*Sir E. Thornton to the Earl of Derby.—(Received May 14.)*

My Lord,

*Washington, May 1, 1876.*

I HAD the honour to receive your Lordship's telegram relative to the extradition of Winslow and others, on Saturday the 29th instant, but at too late an hour to communicate its contents to Mr. Fish on that day. Seeing, however, how short a time must elapse before the discharge of Winslow, I thought it best to call yesterday, Sunday, at Mr. Fish's private house, and submit to him the contents of your Lordship's telegram.

Mr. Fish, in reply, begged me to convey to your Lordship the regret of the Government of the United States that it was unable to give an assurance that Winslow and the other prisoners, who had been committed in England for extradition, would not be tried in the United States for any offence committed prior to the surrender, other than the extradition crimes proved by the facts on which the surrender would be granted. He added that the charges against Winslow were for offences against State laws, and the indictments against him were found in the Courts of the State of Massachusetts, not in the Federal Courts, and that, without regard to any question of policy, or of right to ask any stipulation or assurance, the President could not restrain the jurisdiction of the Courts of any one of the States over offences against the law of that State, and therefore he could not enter into any promise or assurance restricting the power of a State to try a criminal within its jurisdiction for any crime for which he may have been indicted in that State.

In answer to an objection made by me, Mr. Fish said that the Courts could be the only judges of the interpretation of the Xth Article of the Treaty of 1842, which was the only arrangement between the two countries with regard to extradition. The Government itself was, however, of opinion that there was nothing in that Article which prohibited the trial of a surrendered prisoner for any crime other than that for which he was surrendered, and that all that could be expected was that the prisoner should first be tried *bonâ fide* for the crime for which he was surrendered.

The United States Government considered that the stipulation contained in the above-mentioned Article, that the persons charged with the crimes mentioned in it should be delivered up "to justice," was ample justification for their being tried for other crimes, and even showed an intention that they should be tried for any crimes which they might have committed. Such, indeed, had been the practice on many different occasions since the conclusion of the Treaty of 1842.

It is useless to trouble your Lordship with a repetition of the same arguments which I have constantly used to combat this view of the matter. They had no effect upon Mr. Fish, who insisted that Her Majesty's Government would violate the Treaty of 1842 by refusing to surrender Winslow and the other prisoners who were committed for extradition.

I have, &c.  
(Signed) EDWD. THORNTON.

## No. 215.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 16, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, copies of two despatches from Sir E. Thornton in regard to the recent extradition cases.\*

I am, &c.  
(Signed) TENTERDEN.

## No. 216.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, May 19, 1876.*

WITH reference to my note of the 13th instant, I have the honour to remind you that the hearing of the application for the release of Winslow from custody was postponed for ten days from the 13th instant; and that as matters stand at present, he will be released on Thursday the 23rd instant.

Her Majesty's Government would be happy to consider any communication which Mr. Fish might instruct you to make on the subject, after having received my letter to you of the 4th instant; but if no such instruction should have reached you, I would suggest that you should call the attention of your Government, by telegraph, to the date at which Winslow will be released; and should inquire if they have any further communication on the subject to make to Her Majesty's Government.

I am, &c.  
(Signed) DERBY.

## No. 217.

*Sir E. Thornton to the Earl of Derby.—(Received May 20.)*

(Extract.)

*Washington, May 8, 1876.*

I HAVE the honour to inclose copy of a note which I received from Mr. Fish on the evening of the 5th instant. It refers to a note addressed to your Lordship on the 20th ultimo, by the United States' Chargé d'Affaires in London, relative to the case of Winslow.

Before receiving this note, I had met Mr. Cadwalader, Assistant Secretary of

\* Nos. 213 and 214.



State, in the street. He stopped me, and told me that the note was on its way. He explained that Colonel Hoffman had been instructed to communicate to your Lordship the contents of Mr. Fish's despatch to him of the 31st of March last, and that he had intended to do so by means of his note above mentioned of the 20th ultimo. He had since then been instructed to transmit to your Lordship a copy of Mr. Fish's despatch of the 31st March, the substance of which Colonel Hoffman's note of the 20th ultimo had purported to convey to your Lordship.

On the 5th instant Mr. Fish received a copy of this note, and considered, as he thought, your Lordship would perceive, that its contents were not entirely in accordance with the language of Mr. Fish's despatch. Mr. Cadwalader added, that Mr. Fish was not satisfied with the note, which contained some remarks which, he thought, had better have been left out. Mr. Fish would, therefore, be glad if I would telegraph to your Lordship asking that the note in question might be considered as withdrawn.

On my return home I found the note of which Mr. Cadwalader had given me notice; and in consequence of it I had the honour to transmit to your Lordship, on the morning of the 6th instant, the telegram which is recorded in my despatch of that day.

With reference to your Lordship's telegram, dated the 6th instant, at midnight, which I received yesterday morning, I have the honour to state that when at the State Department on the 4th instant, I informed Mr. Fish that the case of Winslow had been remanded for ten days. Upon his asking me with what object this remand had been made, I answered that I presumed that it was in the hope that some arrangement might still be come to, and that the United States' Government would be induced to give the required assurance. Mr. Fish replied, that Her Majesty's Government did not seem to appreciate how completely it was out of the power of the United States' Government to control the State Courts in this matter, or to prevent them from trying Winslow, or any other surrendered criminal in a similar position for crimes other than those for which they would be surrendered. He added, that his Government could not give any such assurance as was required, because the State Courts would pay no attention whatever to any representation which might be made to them on the subject by the Federal Government.

I shall, however, take an opportunity of mentioning to Mr. Fish that Winslow will probably be released at the end of the ten days, unless the required assurance should be given. But I have no hope that the United States' Government will give it.

---

Inclosure in No. 217.

*Mr. Fish to Sir E. Thornton.*

Sir,

*Department of State, Washington, May 5, 1875.*

I REGRET to be under the necessity of saying that a despatch from the Chargé of the United States at London received this day covers what purports to be the draft of a note addressed to Mr. Hoffman (the Chargé) to the Earl of Derby under date of the 20th of April, on the question of extradition and the case of the fugitive Winslow, which on perusal is found to contain expressions which were not suggested, and to advance opinions and arguments which it is supposed must have crept in in the probable haste of preparing the note, but which are not adopted or approved by this Government.

As Colonel Hoffman states that he transmits to this Department the draft of his note owing to the pressure upon his time, it is hoped that the copy sent to Lord Derby may be very different from this draft.

I feel it necessary, however, to advise you of the fact, and to say that it is the wish of this Government that Colonel Hoffman's note of the 20th of April, addressed to Lord Derby, be considered as withdrawn, and that an instruction from this Department to Colonel Hoffman, under date of the 31st of March last, be substituted therefor.

May I ask the favour of you to transmit this request to your Government by telegraph, if possible.

Colonel Hoffman has advised me by telegraph that he transmitted a copy of the instruction referred to to Lord Derby (probably on the 28th of April).

I take leave to inclose a copy of it for your information.

I have, &c.

(Signed) HAMILTON FISH.

No. 218.

*Sir E. Thornton to the Earl of Derby.—(Received May 20.)*

My Lord,

*Philadelphia, May 9, 1876.*

I HAVE the honour to transmit to your Lordship herewith, three printed copies extracted from the "National Republican," of Mr. Fish's despatch to Mr. Hoffman, of the 31st of March last, upon the Winslow extradition case.

I have, &amp;c.

(Signed) EDWD. THORNTON.

Inclosure in No. 218.

*Extract from the "National Republican" of May 9, 1876.*

[This is Mr. Fish's despatch to Colonel Hoffman of the 31st March, 1876 : see Inclosure in No. 169.]

No. 219.

*Colonel Hoffman to the Earl of Derby.—(Received May 20.)*

My Lord,

*Legation of the United States, London, May 20, 1876.*

I HAVE the honour to acknowledge the receipt of your note of yesterday in reference to the case of Winslow, and to inform you that I have to-day telegraphed to Mr. Fish, in accordance with your suggestion.

I have, &amp;c.

(Signed) WICKHAM HOFFMAN.

No. 220.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 20, 1876:*

I AM directed by the Earl of Derby to transmit to you to be laid before Mr. Secretary Cross, a copy of a note addressed to the United States' Chargé d'Affaires at this Court in regard to the extradition of E. D. Winslow, together with two despatches in original received this morning from Sir E. Thornton on the subject, which I am to request may be returned, in order that copies may be supplied.\*

I am, &amp;c.

(Signed) TENTERDEN.

P.S.—A set of the printed correspondence is also inclosed.

T.

No. 221.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, May 20, 1876.*

I TRANSMIT to you herewith, for your information, copies of correspondence, in regard to the recent cases of extradition.\*

I am, &amp;c.

(Signed) DERBY.



## No. 222.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, May 22, 1876.*

THE United States' Chargé d'Affaires called upon me to-day and read a telegram from Mr. Fish, in answer to the telegram which he had sent to him in accordance with the suggestion contained in my note to him of the 19th instant.

Mr. Fish states that my note of the 4th was not received until the 17th instant, and that the Attorney-General is reported in the newspapers as having said on the 13th instant, when applying for Winslow's remand, that unless a reply to that note was received within ten days, no further extension of the detention of the prisoner would be asked for. Mr. Fish adds that my note cannot be replied to by telegraph, and that no other mode of transmission could put his reply in London by the 23rd instant.

If Her Majesty's Government are determined to refuse the surrender of Winslow except on receiving the stipulation which they have demanded, Mr. Fish considers it right to say that it is impossible to give the stipulation. He adds that the President has not the power if he were disposed to do so, and that this will be explained in a reply to my note now being prepared, which will be forwarded at an early day.

I am, &amp;c.

(Signed) DERBY.

## No. 223.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 22, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a despatch which his Lordship has addressed to Her Majesty's Minister at Washington on the subject of the extradition of E. D. Winslow.\*

I am, &amp;c.

(Signed) TENTERDEN.

## No. 224.

*Sir. E. Thornton to the Earl of Derby.—(Received May 22, at night.)*

(Telegraphic.)

*Washington, May 22, 1876.*

I SAW Mr. Fish yesterday, with reference to the Winslow case, when he informed me that he would try to send a reply to your note of the 4th by the mail of the 23rd instant. I inferred from his language that he was not prepared to recede from the position taken by the United States' Government.

## No. 225.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 23, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a telegraphic despatch from Her Majesty's Minister at Washington in regard to the extradition of E. D. Winslow.†

I am, &amp;c.

(Signed) TENTERDEN.

No. 226.

*Mr. Liddell to Lord Tenterden.—(Received May 24.)*

My Lord,

*Whitehall, May 24, 1876.*

WITH reference to previous correspondence, I am directed by Mr. Secretary Cross to acquaint you, for the information of the Earl of Derby, that the Attorney-General appeared before Mr. Baron Amphlett yesterday, and applied for a further postponement of the application for the release of E. Winslow, on the ground that negotiations between the two countries are still pending; and that the learned Judge thereupon adjourned the hearing until the 31st instant.

I have, &amp;c.

(Signed) A. F. O. LIDDELL.

No. 227.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, May 24, 1876.*

WITH reference to my note of the 13th instant, I have the honour to inform you that the hearing of the application for the release of Winslow has been again adjourned until the 31st instant.

I am, &amp;c.

(Signed) DERBY.

No. 228.

*The Earl of Derby to Sir E. Thornton.*

(Telegraphic.)

*Foreign Office, May 25, 1876, 2.40 P.M.*

FURTHER hearing of the application for the release of Winslow has been again adjourned till the 31st instant.

No. 229.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 25, 1876.*

I AM directed by the Earl of Derby to request that you will state to Mr. Secretary Cross that, in the course of conversation at this Office to-day, Colonel Hoffman, the United States' Chargé d'Affaires, made a suggestion that, as it had been stated by Mr. Fish that the United States have Treaties with other countries in which provision is made that persons whose extradition is claimed shall only be tried for the offence for which extradition was accorded, the present difficulty might be met by an Additional Article to the Treaty of 1842 being signed between the two Governments to this effect.

Lord Derby has accordingly caused a draft to Colonel Hoffman to be prepared in this sense, which I am to inclose;\* and I am to request that, in laying the same before Mr. Cross, you will move him to cause Lord Derby to be informed at his earliest convenience whether it meets with his concurrence.

I am, &amp;c.

(Signed) TENTERDEN.

No. 230.

*Mr. Liddell to Lord Tenterden.—(Received May 26.)*

Sir,

*Whitehall, May 26, 1876.*

HAVING laid before Mr. Secretary Cross your letter of yesterday's date, transmitting the copy of a letter proposed to be addressed to the United States' Chargé

\* See Inclosure 1 in No. 231.



d'Affaires, respecting the addition of an Article to the Extradition Treaty of 1842 with that country, I am directed to request you to express to the Earl of Derby Mr. Cross's concurrence in the terms of the letter in question.

I have, &c.  
(Signed) A. F. O. LIDDELL.

No. 231.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, May 26, 1876.*

WITH reference to the paragraph in Mr. Fish's despatch of the 31st of March, in which he states that "in some few Treaties between the United States and foreign countries, provisions exist that the criminal shall not be tried for offences committed prior to extradition, other than the extradition crime," and to the draft Article to the same effect contained in the draft Treaty lately discussed between the two Governments, to which Article Mr. Fish had given his assent, I have the honour to request that you will state to your Government by telegraph that Her Majesty's Government will be ready at once to meet the suggestion made by you in conversation at the Foreign Office yesterday, and to sign an Additional Article to the Treaty of 1842, in the words of that draft Article of which a copy is inclosed.

I have to add that this Article is identical with the one contained in all the Extradition Treaties between Great Britain and other countries mentioned in the accompanying list.

On being informed that the Government of the United States consent to adopt this method of meeting this present difficulty, Her Majesty's Government will be ready to authorize Her Majesty's Minister at Washington, who has full powers, to sign the additional Article with Mr. Fish, or I shall be happy to do so with you, if your Government prefer it.

Her Majesty's Government trust that the Government of the United States will see in this proposal a proof of their sincere desire to maintain a Treaty of such importance to both countries.

I am, &c.  
(Signed) DERBY.

Inclosure 1 in No. 231.

*Draft Article in proposed Extradition Treaty with the United States, agreed to by Mr. Fish.*

### ARTICLE III.

WHEN any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall not, until he has been restored or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered.

No person shall be deemed to have had an opportunity of returning to the country whence he was surrendered until two months at least shall have elapsed after he shall have been set at liberty and free to return.

N.B.—The last paragraph of this Article was added by Mr. Fish.

Inclosure 2 in No. 231.

EVERY Extradition Treaty concluded by Great Britain with foreign Powers since the passing of the Act of 1870 contains an Article in accordance with section 3, subsection 2, of the Act.

The following are the Treaties in question:—

|           |    |    |    |                    |
|-----------|----|----|----|--------------------|
| Austria   | .. | .. | .. | December 3, 1873.  |
| Belgium   | .. | .. | .. | July 31, 1872.     |
| Brazil .. | .. | .. | .. | November 13, 1872. |

|                   |    |    |    |          |           |
|-------------------|----|----|----|----------|-----------|
| Denmark           | .. | .. | .. | March    | 31, 1873. |
| Italy             | .. | .. | .. | February | 5, 1873.  |
| Germany           | .. | .. | .. | May      | 14, 1872. |
| Netherlands       | .. | .. | .. | June     | 19, 1874. |
| Sweden and Norway | .. | .. | .. | June     | 26, 1873. |
| Switzerland       | .. | .. | .. | March    | 31, 1874. |
| Hayti             | .. | .. | .. | December | 7, 1874.  |
| Honduras          | .. | .. | .. | January  | 6, 1874.  |

No. 232.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 26, 1876.*

WITH reference to your letter of this day's date, I am directed by the Earl of Derby to transmit to you a draft of a despatch which his Lordship proposes to address to Sir E. Thornton relative to the Winslow extradition case;\* and I am to request you to move Mr. Secretary Cross to inform Lord Derby, at his earliest convenience, whether he concurs in this despatch in order that it may be forwarded to Washington by to-morrow's mail.

I am, &c.  
(Signed) TENTERDEN.

No. 233.

*Sir H. Selwin-Ibbetson to Lord Tenterden.—(Received May 26.)*

Sir,

*Whitehall, May 26, 1876.*

HAVING laid before Mr. Secretary Cross your letter of this day's date, I am directed to acquaint you, for the information of the Earl of Derby, that he concurs in the despatch (a draft of which was therein inclosed and is herewith returned) proposed to be addressed to Her Majesty's Minister at Washington relative to the Winslow extradition case.

I am, &c.  
(Signed) HENRY SELWIN-IBBETSON.

No. 234.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, May 26, 1876.*

I TRANSMIT to you herewith copies of a correspondence with the Home Office and of a letter to Colonel Hoffman,† from which you will see that Colonel Hoffman having suggested in conversation that the extradition difficulty arising out of the cases of Winslow and Lawrence might be met by an Additional Article to the Treaty of 1842, I have made a formal proposal to him to sign such an Article with me at once, or for Mr. Fish to sign it with you should the United States' Government prefer that course.

In making this proposal Her Majesty's Government have not overlooked Mr. Fish's remarks reported in your despatch of the 1st instant, that the United States ought not, for the future, to make an Extradition Treaty with a foreign Power unless it were stipulated that a surrendered criminal, even when committed for only one crime, might be tried for all and any one of the crimes included in that Extradition Treaty, although for no others.

Her Majesty's Government feel sure that, on further consideration, Mr. Fish will not adhere to this suggestion, since it is evident that such a provision would be inconsistent with the requirement in all Extradition Treaties, both American and English (for instance the Treaty between the United States and Austria of 1856), that the offence for which extradition is granted must be proved to the satisfaction of the committing Court. There are other reasons, as you are aware from the correspondence

\* No. 234.

† Nos. 229, 230, and 231.



which took place in 1870, which prevent Her Majesty's Government agreeing to such a stipulation, but the foregoing objection seems to them sufficiently conclusive.

Mr. Fish stated in his despatch of the 31st of March last that in some "Treaties between the United States and foreign countries provisions exist that the criminal shall not be tried for offences committed prior to extradition other than the extradition crime." A similar Article has also been agreed to by the various countries having Extradition Treaties with Great Britain, mentioned in the list with which I have furnished Colonel Hoffman. The only Treaty in which it is not inserted is the Treaty with France of 1843, and it was not then required, as there are positive regulations in force in France, under a Circular issued in 1841, which have the same effect. It is, however, included specifically in the Treaty now under negotiation with that country.

As Mr. Fish has, moreover, already agreed to this Article in the draft Treaty inclosed in your Excellency's despatch of June 12, 1873, and himself made an addition to complete it, Her Majesty's Government trust that they may learn without delay that he assents to the signature of an additional Article to the Treaty of 1842, in the words of the Article of that draft as I have proposed.

It only remains for me to authorize you, as I have already done by telegraph, to sign such an Additional Article, in virtue of the general full power with which you were furnished in 1868, on Mr. Fish signifying his wish that you should do so.

Her Majesty's Government would regard with much satisfaction such a solution of the questions which have arisen; and, although they cannot waive their claim to put the construction on the Treaty of 1842 which they have maintained, they would be glad to meet the Government of the United States in the matter without prejudice to the arguments advanced on either side.

The signature of an Additional Article to the Treaty of 1842 would not interfere with the negotiation for a new and more comprehensive Treaty, with which Her Majesty's Government are prepared to proceed forthwith, and which the present discussion has shown to be so desirable.

I am, &c.  
(Signed) DERBY.

No. 235.

*Colonel Hoffman to the Earl of Derby.—(Received May 27.)*

My Lord,

*Legation of the United States, London, May 27, 1876.*

I HAVE the honour to acknowledge the receipt of your note of yesterday in the matter of Winslow, and to inform you that I telegraphed its substance to Mr. Fish late last night.

I have, &c.  
(Signed) WICKHAM HOFFMAN.

No. 236.

*Lord Tenterden to Mr. Liddell.*

Sir,

*Foreign Office, May 27, 1876.*

I AM directed by the Earl of Derby to transmit to you, to be laid before Mr. Secretary Cross, a copy of a note from the United States' Chargé d'Affaires at this Court, in regard to the proposed Additional Article to the Treaty of 1842.\*

I am, &c.  
(Signed) TENTERDEN.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, May 29, 1876.*

I HAVE received your telegram of the 27th instant, in which you report that you had communicated to Mr. Fish the substance of my despatch of the 16th instant, which was telegraphed to you on that day, and that he begged you to express his extreme regret that a suggestion made by the United States' Chargé d'Affaires should have led me to suppose that the United States' Government could agree to an Additional Article to the Treaty of 1842; but stated that, while they would be glad to make a new and enlarged Treaty, they cannot, under present circumstances, agree to the Additional Article to the Treaty of 1842 which you were instructed to propose, and which the United States' Chargé d'Affaires had not been authorised to suggest.

You reported further that Mr. Fish had expressed doubts whether a new Treaty could be made in accordance with the Act of 1870, and wished to know whether Her Majesty's Government could not agree to a Treaty not in accordance with that Act, and then obtain from Parliament an Act to enable Her Majesty's Government to carry that particular Treaty into execution. The United States' Government, he said, would be glad to stipulate that a surrendered criminal might be tried for the crime for which he was extradited, and for any and all the crimes in the Extradition Treaty, but for no others; and, he added, contrary to what he had stated on previous occasions, that the United States would agree simply that no one should be surrendered for a political crime, without any mention of authorities before whom the prisoner might prove that the crime which he was accused of was of a political nature.

Her Majesty's Government have carefully considered Mr. Fish's observations in connection with those reported in your despatch of the 1st instant, and they regret exceedingly that he declines to agree to the Additional Article tendered in my telegram of the 26th, to which he had formerly given his entire assent; and they do so the more, as, if the proposal had been accepted, all difficulty in the way of the surrender of Winslow and the other extradition prisoners now in custody in England would have been removed.

With reference to Mr. Fish's suggestions as to the provisions with respect to political crimes which would be accepted by the United States' Government, you will state that Her Majesty's Government propose, with a view of meeting his views on this point, the following clause in respect to political offences:

"A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character."

With regard to Mr. Fish's remarks as to the difference between the wording of sub-section 2, section 3 of the Act of 1870, and section 19 of the same Act, reported in your despatch of the 1st instant, I have to observe that the wording of the two sections above-mentioned has been treated by Her Majesty's Government in all their Extradition Treaties as identical, and they have never claimed to make any distinction in the mode in which an extradition prisoner was to be dealt with, whether surrendered by a Foreign Government to England, or *vice versa*. As the course to be pursued by each country is so defined in all Treaties, the difference which practically consists in the word "crime" being in the singular in sub-section 2, clause 3, and in the plural in section 19, is immaterial, and has no operation upon the wording or working of the Treaties.

The real object of both clauses is that a prisoner should not be tried upon a different state of facts from those proved in the surrendering country. The remedy for such a difficulty as that suggested by Mr. Fish respecting murder and manslaughter is very simple, namely, that care should be taken by those who represent the country applying for extradition, that all the crimes which could be proved by the facts laid before the surrendering authority should be included in the demand for extradition, as was done in the case of Winslow, when a supplemental demand was made that the crime of uttering should be added to that of forgery in the application for his surrender.

But Her Majesty's Government cannot hold out any hope that, after the full consideration which the subject of extradition received in the inquiry in 1868, the Report of the Committee who sat upon it, and the well-considered action of Parliament in embodying the recommendations of the Committee in the Act of 1870, it would be



possible for the Government to ask Parliament to conclude a Treaty with the United States not in accordance with that Act, or to give them powers to agree that with respect to that particular Treaty it might be stipulated that a surrendered criminal might be tried for the extradition crime on which he was surrendered, and also for any and all the crimes in the Treaty, though such crimes were proved by a totally different set of facts than those proved against him in the country surrendering, *e.g.* that a man charged and surrendered in England for forgery should be tried in the United States for murder.

This would be inconsistent not only with the Report of the Committee of 1868, but with all the Treaties which have been entered into with foreign States, and have worked to the mutual satisfaction of those States and of this country.

Her Majesty's Government had hoped that as no objection was raised by Mr. Fish to the IIIrd Article in the Revised Draft Treaty formerly discussed between the two Governments, they were at least of full accord with one another on this point, and they can only repeat their extreme regret that a fresh obstacle is now raised to the settlement of a new Extradition Treaty with the United States, at the time when they believed that only one subject of difference existed between the two Governments, namely, that of the wording of the clause relating to political offences, the objections to which on the part of Mr. Fish will, it is hoped, be removed by the tender of the clause now sent, in which the words objected to by him are omitted, and each country is left free to follow the mode of procedure which its own laws prescribe.

You will read and give a copy of this despatch to Mr. Fish, and will express to him the earnest hope of Her Majesty's Government that he will reconsider his present objection to Article III of the Revised Draft Treaty which he did not raise at the time when the Draft was under consideration in 1871, and by doing so enable a new Treaty to be signed at once.

I have telegraphed to you the substance of this despatch.

I am, &c.  
(Signed) DERBY.

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*Presented to both Houses of Parliament by Com-  
mand of Her Majesty. 1876.*

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LONDON:

PRINTED BY HARRISON AND SONS.



NORTH AMERICA. No. 2 (1876).

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FURTHER CORRESPONDENCE

RESPECTING

EXTRADITION.

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*Presented to both Houses of Parliament by Command of Her Majesty.*  
1876.

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## Further Correspondence respecting Extradition.

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### No. 1.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, May 31, 1876.*

WITH reference to my note of the 24th instant, I have the honour to inform you that the hearing of the application for the release of Winslow has been finally adjourned until the 15th proximo.

I have, &c.  
(Signed) DERBY.

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### No. 2.

*Mr. Liddell to Lord Tenterden.—(Received June 3.)*

My Lord,

*Whitehall, June 2, 1876.*

I AM directed by Mr. Secretary Cross to acquaint you, with reference to your letter of the 22nd of March last, that Messrs. Humphreys, Solicitors for Charles James Brent, who stands committed to Middlesex House of Detention for the crimes of forgery and uttering forged paper with a view to his surrender to the United States as an extradition prisoner, have given notice to the Secretary of State that they intend to apply on the 9th instant to a Judge in Chambers for Brent's release out of custody, under the provisions of the 12th section of the 33rd and 34th Vict., c. 52, or for a Writ of *habeas corpus*.

I am to add, for the information of the Earl of Derby, that the Treasury Solicitor has been instructed, unless in the meantime he hears to the contrary, to instruct the Attorney-General to appear and move that the application be postponed to the same day to which Winslow's case is adjourned.

I have, &c.  
(Signed) A. F. O. LIDDELL.

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### No. 3.

*Sir E. Thornton to the Earl of Derby.—(Received June 3.)*

My Lord,

*Washington, May 22, 1876.*

I HAVE the honour to inclose copy of a despatch which I have received from the Governor-General, informing me that one Maraine Smith had been committed to jail in Ontario as a fugitive from the justice of the United States on a charge of murder. His Excellency added that as no application had been made for the prisoner's surrender, he would be discharged on the 4th of June next, when the two months would expire from the time of his committal to prison.

I transmitted a copy of this despatch to Mr. Fish, who, in reply, addressed to me the note of which a copy is inclosed, and in which he gives as a reason for not having applied for the extradition of Maraine Smith, that Her Majesty's Government had informed the United States that Winslow and other fugitive criminals then in British jurisdiction would not be surrendered.

I have forwarded a copy of Mr. Fish's note to the Governor-General Canada.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure 1 in No. 3.

*The Earl of Dufferin to Sir E. Thornton.*

Sir,

*Government House, Ottawa, May 6, 1876.*

IT has been reported to me, by the Secretary of State for Canada, that a person of the name of Maraine Smith, late of the City of Detroit, in the State of Michigan, was, on the 4th of last month, committed to gaol at Sandwich, in the County of Essex, Province of Ontario, as a fugitive from the justice of the United States, on the charge of having murdered one Daniel R. McKeon.

As the usual application for the surrender of this man under the Extradition Treaty has not been received by me, I have the honour to request that you will be good enough to inform the Secretary of State of the United States that on the 4th of June, two months from the date of his committal to prison, he will, under the Imperial Statute, 33 & 34 Vict., chapter 52, be entitled to claim his discharge.

I have, &c.  
(Signed) DUFFERIN.

Inclosure 2 in No. 3.

*Mr. Fish to Sir E. Thornton.*

Sir,

*Department of State, Washington, May 17, 1876.*

I HAVE the honour to acknowledge the receipt of your note of the 13th instant, informing me, at the request of the Governor-General of Canada, that one Maraine Smith, late of Detroit, was committed as a fugitive from justice in the County of Essex, Ontario, upon the 4th April last, and as the usual application for his surrender, under the Extradition Treaty, had not been received, that upon the 4th June he will be entitled to claim his discharge.

Upon the 11th ultimo, the Governor-General of Michigan addressed me, stating that the person referred to, after an examination, had been committed for the crime of murder, and was held to await extradition, and requested that the proper steps be taken for that purpose.

The case had not been brought to the attention of this Department prior to that time.

As Her Majesty's Government at the time of the receipt of this communication had already informed the United States that Winslow and other fugitive criminals then in British jurisdiction, in whose cases the necessary steps had been taken, and who had been committed for extradition, could not be surrendered pursuant to the stipulations of the Xth Article of the Treaty of 1842, it was deemed advisable to desist from preferring applications for extraditions in new cases until the final decision of Her Majesty's Government on that question should be reached, and the Governor of Michigan was informed of this conclusion.

While, therefore, requesting you to express the thanks of this Government to his Excellency the Governor-General of Canada for his courtesy in furnishing the information referred to, I have to request that you will inform him of the reason why no formal request has been preferred in this case pending the decision of Her Majesty's Government in the Winslow and other cases now before it.

I have, &c.  
(Signed) HAMILTON FISH.

No. 4.

*Sir E. Thornton to the Earl of Derby.—(Received June 3.)*

(Extract.)

*Washington, May 22, 1876.*

I UNDERSTAND that Mr. Fish received on the evening of the 17th instant a copy of your Lordship's note of the 4th instant, to Colonel Hoffman, relative to



the Winslow extradition case. It was taken into consideration at the Cabinet meeting of the 19th instant, at which, as it is generally reported, it was decided that the United States' Government could not recede from the conclusion already arrived at.

I yesterday saw Mr. Fish at his own house, when he told me that he would, if possible, send an answer to your Lordship by to-morrow's mail; but the language which he used left me with the conviction that the United States' Government would not recede from the position which it has already taken, and that it was of opinion that the President could not give an assurance the conditions of which he was powerless to enforce with the State Courts.

No. 5.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, June 3, 1876.*

WITH reference to my letter of the 29th of March, I have the honour to acquaint you that a letter has been received from Her Majesty's Secretary of State for the Home Department stating that the Solicitors of Charles Louis Brent, who stands committed to Middlesex House of Detention for the crimes of forgery and uttering forged paper with a view to his surrender to the United States as an extradition prisoner, have given notice to Mr. Cross that they intend to apply on the 9th instant to a Judge in Chambers for Brent's release out of custody under the provisions of the 12th section of the 33 and 34 Vict., c. 52, or for a writ of *habeas corpus*.

Her Majesty's Attorney-General will be instructed to appear and move that the application be postponed to the same day to which Winslow's case is adjourned.

I have, &c.

(Signed) DERBY.

No. 6.

*Mr. Fish to Colonel Hoffman.—(Communicated to the Earl of Derby by Colonel Hoffman, June 6.)*

Sir,

*Department of State, Washington, May 22, 1876.*

YOUR despatch under date of May 6, inclosing a copy of a note addressed to you by Lord Derby in relation to the extradition of Winslow, bearing date May 4, reached me late on the 17th instant.

This note of Lord Derby's, on its face, is a reply to a note from you to him, wherein you communicated the general purport of an instruction addressed by me to you under date of the 31st of March last, but on the 29th of April last you had given to Lord Derby a copy of the instruction of 31st of March. His Lordship's note of the 4th of May is therefore taken as a reply to that instruction, although it contains allusion to some expressions in your note which were not there in pursuance of your instruction.

If Her Majesty's Government had simply persisted in a refusal to deliver Winslow and the other criminals now in custody awaiting extradition, for the reasons heretofore given, it would have been unnecessary to prolong discussion, inasmuch as the distinct and definite refusal of this Government to give any assurance or stipulation not called for by the Treaty, or to admit the right of Great Britain to exact from the United States stipulations foreign to the Treaty, as a condition of the performance by Great Britain of her obligations, had already been communicated to Lord Derby.

But, as the note in question assumes to give the grounds on which the refusal to surrender the criminals is based, and in large measure seems to change those previously assumed, and as the United States cannot assent to the accuracy of many of the statements made, or to the inferences drawn therefrom, it seems necessary that some reply should be made.

In my instruction of the 31st of March last, reference was made in detail to numerous cases decided in the Courts, and to evidence from various sources, alike British and American, including the testimony of British officials best versed in extradition law, the opinion of British Crown Lawyers, the published decisions of

British Courts and British writers upon extradition law, that where a criminal was in good faith demanded for one offence within the Treaty and surrendered therefor, there was no agreement, understanding, nor practice that he might not be placed on trial for another offence with which he was charged in addition to the extradition crime.

Lord Derby does not explain, modify, or deny that this whole current of authority is to this effect, but meets the point with the assertion that "there is no case within the knowledge of this" (the British) "Government in which a prisoner was surrendered by England for one offence and tried by the United States for a different one," and states that the case of Heilbronn was a "private prosecution," and that no evidence can be found of the attention of the Government having been called to it. In a subsequent passage he again speaks of "private prosecutions" to which the attention of the Government has not been called. I am at a loss to appreciate the application of the term "private" to the prosecution of a felony in the name and behalf of the State or Sovereign. If, however, it means no more than what is claimed when it is said that the attention of the Government had not been called to a particular case, the question arises as to that jealous protection of individual and personal rights which is the just pride of British as it is of United States' laws, and which constitutes so large a part of Lord Derby's note. The alleged criminal in whose behalf the State has exercised its sovereign power, whom it has seized and brought from a distant land under solemn Treaty obligations, is especially entitled to be looked after by the State, and be protected in such rights as belong even to the criminal.

If Lord Derby's theory that the prohibition of the trial of a surrendered fugitive for other than the specific crime for which he had been delivered be correct, either as a recognized principle of the general or international law of extradition (if there be any such agreement between nations on the subject of extradition as to form what can be regarded as "international law"), or as implied in the Treaty of 1842, then a surrendered fugitive is, under such international law (if such it be), or under such Treaty, placed in the hands of the receiving Government with the highest obligations of honour, of justice, and of international faith to protect that fugitive from any other prosecution than such as that Government claims that he is liable to.

The fugitive is surrendered to the Government in its political capacity, and if he be subjected to any prosecution against which he has a right to immunity, the Government into whose special charge and guardianship he has been surrendered for a specific purpose violates its faith and neglects its duty, both to the individual surrendered and to the State which surrendered him. On the theory advanced by his Lordship the surrendered fugitive must look to the State in its political character—what Lord Derby calls "the Government"—for his protection, and that power, call it State or Government, cannot escape its responsibility by the plea of ignorance, and that its attention had not been called to the case.

Heilbronn was a fugitive criminal demanded by Great Britain under the Treaty of 1842, on the charge of forgery, and was accordingly delivered up by the United States to British justice. He was tried for forgery before a British Court and acquitted, and was thereupon indicted and tried for a public offence not named in the request or warrant of extradition, and one not included in the Treaty, and he was thereof convicted.

If, under British jurisprudence, no public prosecutor is provided to enforce her law against criminals surrendered on a demand made upon a foreign State, and the duties of a prosecutor are discharged by an individual, not technically a servant of the Crown, but permitted to assume that office, can the Government of Great Britain claim or expect that the regular proceedings in her Courts can be disavowed by the political branch of the Government, as not having been brought to its attention, or that such proceedings form no element in determining what has been the practice of the two Governments under the Treaty?

Heilbronn's case was not referred to as an exceptional one, but as one of the numerous instances, all tending to prove the unbroken practice and understanding of the two Governments. In addition to Heilbronn's and the other cases heretofore referred to by me, there are other and recent decisions of distinguished British Judges directly upon the point, and in full harmony with the views maintained by the United States.

Mr. Justice Ramsay, in the case of Israel Rosenbaum in the Supreme Court of Canada in 1874, when the discharge of the prisoner was claimed because there was



no prohibition under the laws of the United States against the trial of criminals for offences other than those for which they were extradited, as was required by the Act of 1870, says :—

“ If it were recognized as a principle of international law that a prisoner extradited could only be tried for the crime for which the extradition took place, it would not have been necessary for the Imperial Parliament to make these provisions ” (alluding to the provisions of the Act of 1870), and adds, “ I am not, however, aware that it has been laid down in England, that a man once within the jurisdiction of English Courts, could set up the form of his arrest, or the mode by which he came into custody as a reason for his discharge when accused of crime ; ” and the same was substantially held in the case of Worms, extradited from Canada within the last few weeks.

It is not the province of any Government to make inquiry into the extent of knowledge which the political department of another Government may have as to the practice or the administration of justice in its Courts in reference to extradition, but I have alluded in prior instructions to the uniform practice without dissent or objection in both countries under the Treaty of 1842, and have shown that it was common in both countries, and that it was held by high judicial decisions in both, that a prisoner extradited in good faith for an extradition crime might also be tried for another crime.

Lord Derby in his note again refers to the provisions of the Act of Congress of August 12, 1848, as showing that persons delivered up could not be tried for any offences other than those for which they were surrendered ; although in my former instruction I stated that the United States’ District Court, and the Solicitor-General acting in the place of the Attorney-General, had each separately decided precisely the opposite. The construction of the municipal laws of a State pertain to that State, and not to other Governments.

In the United States a Treaty duly ratified and exchanged is the supreme law of the land, and its provisions are binding without legislation.

It becomes convenient, however, from time to time to enact laws to regulate the general course of proceedings arising under one or a variety of Treaties ; but such legislation is purely internal and municipal.

The Act of 1848 recognizes the fundamental doctrine, that the surrender of a fugitive criminal is a political act of the Government, and the function of the Court or Magistrate is only to determine whether a case has been made out in accordance with the Treaty, or the statute enacted in aid of its enforcement. It neither adds to, nor detracts from, the obligations created by the Treaty, and is not essential to the execution by the United States of its engagements under the various Extradition Treaties into which this Government has entered, but affords a convenient and satisfactory aid in the administration of these obligations.

When the United States, by the 27th section of the Treaty of 1794, in much the same language as the present Treaty, engaged to deliver up fugitives, no Act whatever was passed, but fugitive criminals, nevertheless, were given up on the demand of Great Britain under that provision of the Treaty. In like manner, when the Xth Article of the Treaty of 1842 went into effect, no statute was needed ; but six years thereafter (in 1848) the Act in question was passed, it being thought advisable to provide machinery to carry out all Treaties providing for extradition, not only with Great Britain but with all Governments with which the United States had and might have any Treaties, no matter what may be their particular provisions.

Of these Treaties some, as I have said, contain restrictions as to the crimes for which a criminal may be tried by the State demanding him, and others are silent on the question, but the Act applies to all.

Lord Derby in his note to you contends that the British Extradition Act of 1870 imposed no new condition upon the Treaty of 1842 ; but in his note of April 13, he refers to the condition “ which Her Majesty’s Government are compelled to require under Section 3, Sub-section 2, of the Act of 1870.”

When it is proposed to engraft, whether by implication or by Act of Parliament, upon an existing Treaty, a provision not expressly contained therein, I may be permitted to look into the debates in the British Parliament in 1866, when it was proposed to amend a Bill to carry into effect the Treaty with France, by requiring a stipulation similar in its purport to that now asked of the United States, and there find that his Lordship, at the time Lord Stanley, and then as now Her Majesty’s Secretary of State for Foreign Affairs, opposed the amendment, saying

that "in a case like this, international courtesy demanded that the Treaty should not be materially altered, without communication with the other party." In the same debate Lord Cairns, then Attorney-General, and now Lord Chancellor, said that the bargain was made between the Sovereigns, and the amendment "proposed to introduce a new ingredient into the bargain which did not exist at the time the bargain was made. It might have been unreasonable that this new ingredient had not been introduced at the beginning, but to introduce it now was simply to break the bargain which the Sovereigns had made, and Parliament had ratified; it was to infringe upon Treaty engagements, and that without notice to the other side;" and further, and in particular reference to the latter part of the amendment, quite similar to the provisions of the Act of 1870, now under discussion, he said, "to put such words into an Act of Parliament, which did not exist in the Treaty, would only be offering a gratuitous insult to the foreign Power to whom it applied, without securing any real advantage." The amendment was withdrawn.

The Treaty between Great Britain and France, which was the subject of that debate, was like that between Great Britain and the United States of 1842, silent as to an inhibition of the prosecution of a surrendered fugitive for other than the specific offence for which he was given up. The proposition in Parliament thus sternly and honestly denounced and defeated, as "discourteous," as "breaking a bargain," as "infringing upon Treaty engagements," as a "gratuitous insult to a foreign Power," and "as securing no real advantage," is nevertheless what it is now claimed to have been done by virtue of the Act of 1870, with regard to the United States.

Her Majesty's Court of Queen's Bench, in *Bouvier's case*, and more recently the Courts in Canada, have substantially held the same high doctrine which the eminent statesmen whom I have cited not long since announced in their places in Parliament. Neither international law nor international courtesy have changed the principles on which they were then recognized as resting.

The United States adheres to the position announced in my former instruction, that it will recognize no power to alter or attach conditions to the executory parts of an existing Treaty, to which it is a party, without its previous assent.

Lord Derby seems to imagine some want of reconciliation between the views of the United States upon this extradition question, and those asserted in its behalf on the rights of political asylum, and asks what is to prevent the United States from obtaining a prisoner on one charge and trying him for a political offence. The answer is ready. The inherent inborn love of freedom, both of thought and of action, is engraved in the heart of the people of this country so deeply, that no law can reach, and no Administration would dare to violate it.

A large proportion of those who sought refuge on our shores prior to the formation of this Government, sought this country for the enjoyment of freedom of opinion on political and religious subjects, and their descendants have not forgotten the value of an asylum, nor the obligation of a State to shelter and protect political refugees.

Neither the Extradition clause in the Treaty of 1794, nor in that of 1842, contains any reference to immunity for political offences, or to the protection of asylum to political or religious refugees. The public sentiment of both countries made it unnecessary.

Between the United States and Great Britain it was not supposed on either side that guarantees were required of each other against a thing inherently impossible, any more than by the laws of Solon was a punishment deemed necessary against the crime of parricide, which was beyond the possibility of contemplation.

That a sentiment stronger than written law has been sufficient to prevent any attempt to infringe on this right, it is but necessary to recall the political events occurring in England, in Ireland, and in the United States since the Treaty of 1842 has been in force, the attempted and the actual rebellions which have been witnessed, and the consequent exodus of parties engaged, and yet not a demand by either Government upon the other for the surrender of a fugitive for a political offence. In this respect, what has been must continue to be.

Careful as this Government has been, and will be, to maintain the right of asylum for political and religious refugees, it is mindful of the duty to its own citizens and to society at large devolving upon a State, to visit punishment upon offenders against the laws, a duty in no way antagonistic to the preservation of the right of asylum.

The rights of society and the duties of the State in the punishment of criminals



should not be narrowed and unduly restricted, upon the vague suggestions or fear that, at some time, some political criminal may be placed in jeopardy.

The duty of Government to protect its own citizens and punish crime is equally a duty with that of affording hospitality and shelter to political offenders from abroad. The Government of the United States sees no reason why either should be sacrificed to the other, any more than why all criminals should escape for fear some political offender may suffer.

His Lordship believes that the only test and safeguard for the liberty of the individual and the maintenance of the right of asylum are to be found in the principle for which he contends, that the crime or crimes of which a man is accused in the country surrendering, and for which he is surrendered, are the only crimes for which he ought to be tried in the country claiming.

Differing with his Lordship, I think that the liberty of the individual and the right of asylum would be equally guarded (independently of any reliance on common principles, and on the good faith of both nations) by a Treaty, providing that a surrendered criminal shall be tried for none other than one of the several crimes enumerated in the Treaty, and for which each Government is willing to surrender. The fugitive would thus be effectually protected against trial for a political offence, justice would be more effectually administered, and crime be allowed less chance of escape.

The United States would not object to such limitation in any Treaty which it may be called upon to negotiate with a foreign State. But with the limitation proposed by Lord Derby, it is possible that, if a criminal be surrendered on a charge of murder, and if the evidence developed on the trial establish only manslaughter, he might consequently escape. Or, if one be charged with assault with intent to kill, and after the issuing of the requisition or of the warrant, the victim dies, it is doubted whether, in this case, under the common law of England, which obtains also in most of the United States, the fugitive could be convicted of assault, &c., and not having been surrendered for murder, the doctrine contended for would protect him from trial on such charge.

I should not here again advert particularly to the British Act of 1870, but that Lord Derby's note seems to invite some examination of its provisions, and that he alludes to the abortive efforts made since its enactment to negotiate a new Treaty of Extradition between the United States and Great Britain, and, as he seems to claim, under its provisions.

In 1870, Great Britain had three Treaties of Extradition with France, Denmark, and the United States.

Owing to difficulties presented by British law, the Treaty with France had been, at least, between 1843 and 1866, practically a dead letter, the Treaty with Denmark had (as has been represented) rarely been resorted to, if at all.

English practice as to extradition had been with the United States under the Treaty of 1842. What that practice had been I have shown. Great Britain, at this time, determined to establish a system of extradition, applicable to all Governments, for her convenience, and in order to save the difficulty which had been experienced in obtaining the assent of Parliament, or in providing the means of carrying out a Treaty; and in substance proposed to define under what limitations and conditions extradition ought to be, and might be had.

It was her right to propose a system, and to invite foreign States to accede to her views, and make Treaties thereunder. The general system, however, was anomalous. It applied the same restrictions to a Christian or a non-Christian State, and left no opportunity to suit a particular Treaty to the particular demands of two Governments. Soon after the passage of the Act of 1870 a proposition was made to the United States to make a Treaty thereunder, and after some examination the proposition was declined.

In 1873 an amendatory Act was passed, and further application being made, a negotiation was inaugurated.

Difficulties were experienced at the outset and at every stage, growing out of the system which had been adopted and the inflexible character of the provisions of the Act. Various drafts were from time to time prepared at the British Foreign Office, and discussed, with an effort to reach an agreement. In these drafts it was proposed that a criminal should not be tried for any offence committed prior to his surrender, other than the particular offence on account of which his surrender was made. And while an effort was made to extend the right to try a criminal to any of the extradition crimes named in the Treaty, and to any higher crime than that

for which he was surrendered, the effort was abandoned, because the United States was informed that under the Act a provision was inadmissible by which an offender surrendered for one offence named in the schedule could be tried for any other than the extradition crime.

The negotiation was continued, however, until June, 1874, when the United States reached the conclusion that a Treaty could not be negotiated under the Act.

That this Government ever reached or expressed the opinion that this Act was the embodiment of what was the general opinion of all countries on the subject of extradition is far from correct.

On the contrary, the United States was, and is, of the opinion, that as the provisions in a Treaty, placing limits on the right of a foreign State to try extradition criminals are chiefly inserted to protect political refugees, it amounts to a surrender of criminal justice to that principle to limit the right to a trial for the single particular crime named in the warrant of extradition; but that a proper limitation might be made by providing that the criminal shall be tried for no political offence and for no crime not an extradition crime.

Such is understood to be the provision in almost all the French Treaties negotiated with European Powers; such was substantially the provision in the Treaty negotiated between Great Britain and France in 1852; and such is the express provision inserted in the Treaty negotiated between the British Island of Malta and Italy in 1863, and approved in Great Britain.

From the earliest period this Government has had occasion to consider the questions arising under extradition law, the Articles of Confederation having extradition provisions, as has the Constitution of the United States, governing the question between the States of the Union; and, while the United States do not profess to lay down rules of international law on this question, this Government does not consider it now for the first time, nor has its jurisprudence been silent in developing the system. In the negotiation referred to the attention of the Government of the United States was directed to the proposed Treaty more than to the Act, looking to its provisions as binding on the Government of Great Britain entirely, irrespective of the Act in question.

But many of the provisions of the Act did not, and do not, seem to be reciprocal, and appear to furnish excuses for a failure to perform an obligation imposed by a Treaty made thereunder, or a shelter for a responsibility which naturally belonged to the Government.

In view of the position assumed by Great Britain during this controversy, by which Treaty provisions are practically made subservient to Acts of Parliament, the difficulty and want of reciprocity in making any Treaty thereunder becomes more apparent.

It is not my intention to attempt to critically examine this British Statute, but it will not be inappropriate to refer to some of these provisions.

Her Majesty's Government reserves to itself the right by Section 2, after an arrangement has been made with a foreign State, by the Order in Council applying the Act, or by any subsequent Order, to "limit the operation of the Order," to restrict the same, and "to render the operation thereof subject to such conditions, exceptions, and qualifications as may be deemed expedient."

Again Section 2, Sub-division 1, provides that a fugitive criminal shall not be surrendered for a political offence, "or if he prove to the satisfaction of the Police Magistrate, or the Court before whom he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character;" in substance, therefore, the criminal may take two appeals from the decision of a Police Magistrate on this question, and provided he succeeds on any application, he may be discharged; but no provision is made for an examination of the question, in any quarter, should the Police Magistrate decide in favour of the criminal. In such event a question which is purely one for the Government to deal with, is remitted to a Police Magistrate; and should he improperly decide, the Government is sheltered by a quasi-judicial decision, and this of an officer not necessarily of a high grade.

Again Section 2, Sub-section 3, provides that a fugitive criminal shall not be surrendered unless provision is made by law in the foreign State, or by arrangement, that he shall not, until he has had an opportunity of returning, &c., be tried "for any offence committed prior to his surrender, other than the extradition crime, proved by the facts on which the surrender is grounded."



It will be seen that the word "crime" is carefully used, in the singular; and, as Lord Derby states in his note, this Government was informed in 1870 that any provision would be inadmissible, by which a prisoner surrendered for one offence could be tried for any "other than the extradition crime for which he was surrendered."

But when the corresponding provision limiting Great Britain to trials is examined, Section 19, it is provided that a criminal so surrendered "shall not be triable, or tried, for any offence committed prior to the surrender, in any part of Her Majesty's dominions, other than such of the said crimes as may be proved by the facts on which the surrender is grounded."

The want of reciprocity of these provisions is quite clear, inviting frequent questions and difference. To make one further remark as to this Act, the latter part of Section 7 provides, that if the Secretary of State is of opinion that an offence is one of a political character, he may refuse an order for a warrant of apprehension, and that he may "at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody."

In the drafts of Treaties prepared and submitted to this Government, under this Act, no such corresponding authority to discharge criminals in custody was proposed to be given to the United States; nor does the Act seem to contemplate a reciprocal right to other Powers.

I repeat that this Act does not concern the United States, except in so far as it is put forward to limit our Treaty rights, and I have been drawn into any consideration of its system or particular provisions only from the language of Lord Derby, that it was the embodiment of the general opinion of all countries on the subject of extradition.

Moreover, if the United States had been willing to negotiate a new Treaty, which should contain certain restrictions as to trials not included in the existing Treaty, and give certain advantages not known thereto, such readiness could not justify Great Britain, after the negotiation had failed, in withholding all the advantages, and in seeking to ingraft upon the old Treaty such of the rejected provisions as she might select, particularly so when the Act of Parliament of 1843 (6 and 7 Vict., chap. 57), was by its provisions to continue as long as the Treaty, and the 27th section of the Act of 1870 exempted the Treaty with the United States from the clauses which were foreign to its terms; and when the United States soon after the passage of the Act of 1870, and on January 27, 1871, had informed Her Majesty's Government that this Government understood the 27th section of the Act of 1870, as giving continued effect to the existing engagements for the surrender of criminals, to which no dissent was at any time or in any form or manner expressed. In fact, the understanding of the United States on this question was not only not dissented from, but has been sustained by the Supreme Court of Canada, in *Worms' case* in 1876, and in *Rosenbaum's case* in 1874, where the Court states "I cannot see how a new provision of the Act of 1870 could be consistent with the Treaties with France, the United States, and Denmark," and by the conclusion, so far as a conclusion was reached, by the Courts of Queen's Bench in the case of *Bouvier* in 1872, to which I have heretofore referred, where the Lord Chief Justice says, that although he hesitates to express an opinion, he plainly sees that it was intended, while getting rid of the statutes by which the Treaties were confirmed, to save the existing Treaties in their full integrity and force, and that had it been necessary to decide that point he would have been prepared to do so.

Having examined that case with care, as to what was there decided, I read with surprise Lord Derby's statement that the point decided was that, under the provisions of the French Treaty, unless it had been proved to the Court that the French law had provided that *Bouvier* could not be tried for any other offence than that for which he was surrendered, *Bouvier* could not have been delivered up, and I am quite satisfied that a perusal of the case itself will tend to a very different conclusion.

Lord Derby makes reference to certain correspondence between an official of the Home Office and the Solicitors of Lawrence soon after his surrender, and before any representation had been made to this Government. This correspondence assumed, in a few words, to prejudice and dispose of the whole question, and to state what was the law of this country, and the general law of extradition of all countries in reference to the trial of surrendered fugitives. It was unknown to, unauthorized by, this Government, and founded on the representation and argument of the

criminal. It appeared in the public prints, and was used by the counsel and friends of Lawrence in the United States to prejudge the question and create difficulty between the two Governments; and I deeply regret the necessity which requires me to question the reference to *ex parte* representations made by the paid solicitors of a criminal to an official of a foreign Power in the discussion of a grave question involving the rights and impugning the conduct of a friendly State, and jeopardizing the maintenance of a Treaty of long standing and of beneficial operation.

Lord Derby also quotes a letter of instruction addressed by the Attorney-General of the United States to the District Attorney at New York in reference to the trial of Lawrence, whose case in the whole correspondence seems to have overshadowed that of Winslow, which alone is the subject of the present requisition made by the United States upon Her Majesty's Government, and his Lordship inquires as to the power of the Attorney-General over prosecutions instituted against extradited criminals.

The letter in question was addressed by the Head of the Department of Justice to one of his subordinate officers in reference to the conduct of a case under his charge. The Attorney-General directs that "Lawrence must first be tried upon the charge upon which he was extradited, and upon no other until that trial is ended."

This letter of instruction, passing from a superior to a subordinate officer, was not, and was not intended to be, an exposition of the views of the Government upon any general proposition, but a specific instruction in a particular case; and, whether or not he had ever examined the opinion of the late distinguished Under-Secretary of State for Foreign Affairs of Her Majesty's Government, he seems to have been guided by the same appreciation of Treaty rights and of international law which led Lord Hamond, in his examination before the Special Committee of the House of Commons, to say, "We admit in this country that, if a man is *bonâ fide* tried for an offence for which he was given up, there is nothing to prevent his being subsequently tried for another offence, either antecedently committed or not."

In reply to the question of Lord Derby as to the power of the Attorney-General over prosecutions, it will be borne in mind that in the United States an offence may be against Federal laws or against the laws of one of the States. The Attorney-General has power to control all criminal prosecution for offences against the Government, pending in the Federal Courts, but no power whatever to interfere, directly or indirectly, in any State prosecution.

The President has, in like manner, the power to pardon criminals convicted, and to direct the suspension or dismissal of criminal prosecutions, in the Federal Courts, but none to pardon those tried and convicted in the State Courts, or to control the proceedings of these Courts.

Criminals of both classes come under the Extradition Treaty. It happens that Lawrence is charged with crimes against the Government, and Winslow and the other forgers with crimes against State laws.

Neither the President, nor any officer of the Federal Government, has power to control or to dismiss the prosecution in Winslow's case, or in any case where the offence is against the laws of one of the States, and could not give any stipulation or make any arrangement whatever as to the offences for which he should be tried, when returned to the justice of the State against whose laws he may have offended.

But, as I have before stated, a Treaty duly ratified and proclaimed is, in the United States, the supreme law of the land, and if the Extradition Treaty did, as it does not, provide that no criminal could be tried for any other than certain particular offences, such a provision would be binding upon all Courts, both State and Federal.

The absence of any such provision from the Treaty between the United States and Great Britain leaves to the State Courts the extent of jurisdiction over returned criminals which has been so repeatedly referred to as recognised by the judicial divisions of the Courts of both countries.

His Lordship refers to the "late case of Blair, who was (as his Lordship mildly expresses it) inveigled by a British subject, with the assistance of American officers, from the United States, and tried at Liverpool for fraudulent bankruptcy, and sentenced to imprisonment."

He was promptly released by the British Government, which sent him back to the United States, paying his expenses back to the place whence he had been brought.



This prompt and generously just conduct of Her Majesty's Government is duly recognized and appreciated by the United States. The abduction was, however, regarded by this Government as a case of kidnapping, but the power so promptly and efficiently exercised by the British Government is an evidence of the inherent power existing in the Political Department of that Government, when it sees fit to exercise it, over the person of the individual, and in control even of the judgment of the Courts.

Could not the power thus summarily exercised in an act of comity, and in consideration of a wrong committed in a distant jurisdiction, be also exercised in the performance of a Treaty obligation, and in aid of the administration of justice, without being hampered by the technicalities of a municipal act? Whether Blair personally desired to be returned to the United States is not known, nor is it supposed to be of any consequence. He was deported and sent out of Her Majesty's jurisdiction by the political authorities of the Government, without process of law, but merely upon the representation of the United States of the circumstances attending his abduction or inveiglement.

His Lordship speaks of having been "assured of the intention of the United States' Government to try Lawrence for other than the extradition crime for which he was surrendered." Her Majesty's Government has never been thus assured, and for the very good reason that the Government of the United States has never reached any such conclusion, and has neither expressed nor formed any such intention.

It does, however, hold to the opinion that, if thus inclined, it has the power and the right, after having tried him on the charge on which he was surrendered (although he may have been surrendered on only one of twelve or more charges of which the proofs were furnished), with a *bond fide* intent and effort to convict him on that one charge, to try him for others of the many offences of which he has been guilty. It does not conceal, but avows its belief in this right. And hereupon Lord Derby advances the startling declaration, which I repeat in his own words: "They (Her Majesty's Government) have always regarded the claim so to try him as a breach of the Treaty of 1842."

If Her Majesty's Government seriously advances this, as indicating a mode whereby, in their judgment, a Treaty may be broken, it is as novel as it may prove to be far reaching. It is simply the proposition that the assertion by one party to a Treaty of a claim, or of a construction of the instrument not admitted by the other, and without any act in derogation of the Convention, or of the rights of the other party, constitutes of itself a breach of the Treaty.

I note this assertion, not with a view to discussion, but in the hope that so dangerous a doctrine may prove to have been unguardedly advanced, and may not be left unexplained or unavowed, to justify future action (from whatever quarter) upon its broad statement, under which Treaties and Conventions become worthless.

While it may not be necessary to repeat the position of the United States, it is proper to say that the United States has simply demanded the performance by Great Britain of her Treaty obligation to deliver fugitives, under the Treaty of 1842, as the same has been in operation for more than thirty years, and insists that no British statute can attach a condition to the Treaty foreign to its terms.

If any proceedings in the United States, in the case of any criminal, have given rise to question or complaint, this Government is prepared to hear and properly dispose of any such complaint.

But while the Treaty shall be in force, the Government of the United States would be strangely forgetful of the dignity and rights of the country, if a foreign State were permitted to exact stipulations or engagements, pursuant to her law, but foreign to the Treaty, as a condition of obtaining the performance of Treaty obligations.

It will be a cause of great regret that a Treaty which has worked so long and so beneficially should be terminated on such a ground, but the decision of this question is for the authorities of Great Britain. The United States has, in due form, and after complying with every requirement of the Treaty, demanded the surrender of Winslow and the other criminals in London, and it is for Her Majesty's Government to decide whether Great Britain will or will not perform her Treaty obligations.

You will read this instruction to Lord Derby, and, in case he desires it, you will furnish him with a copy.

I am, &c.  
(Signed) HAMILTON FISH.

No. 7.

*Colonel Hoffman to the Earl of Derby.—(Received June 6.)*

My Lord,

*Legation of the United States, London, June 6, 1876.*

REFERRING to your notes of May 5th and 6th, in the matter of Winslow, I have the honour to forward to your Lordship herewith a copy of an instruction I have received from Mr. Fish in answer to those notes, with directions to communicate it to your Lordship.

I have, &amp;c.

(Signed)

WICKHAM HOFFMAN.

Inclosure in No. 7.

*Mr. Fish to Colonel Hoffman.*

Sir,

*Department of State, Washington, May 24, 1876.*

SINCE instruction dated the 22nd instant was prepared, I have received your despatch under date of the 11th instant, inclosing copies of two notes addressed to you by Lord Derby, on the subject of the extradition of Winslow, bearing date respectively the 5th and 6th instant.

In the former of these notes Lord Derby informs you that a copy of instruction of March 31, which had been transmitted to him by you on April 29, had been communicated to Her Majesty's Secretary of State for the Home Department, who had requested him to call your attention to the part which alludes to Lawrence's case, and which states that, although not arraigned on any other indictment than for the forgery for which he was extradited, the British Home Office has raised the question that he may be possibly tried for other charges and for other crimes, and states that the Home Secretary wishes to observe that no question was raised by him until he was satisfied that Lawrence had been indicted, although not yet arraigned, for smuggling.

An indictment was found against Lawrence for smuggling February 3, 1875, a month before any steps had been taken towards his extradition or any demand made therefor.

The indictment had been found some time before he departed for Great Britain; his extradition was not asked therefor, nor was the charge proved against him in the proceedings in London, and he has not been arraigned upon it in this country.

The United States has stated what is claimed to be the practice and the right of this Government under the Extradition Treaty, but has not stated its intentions as to the trial of Lawrence, nor has Her Majesty's Government, so far as I am aware, any evidence to justify any conclusion on that point.

Lord Derby, in his subsequent note of the 6th of May, informs you, in reply to your note transmitting references to certain late decisions in the Supreme Court of Canada, not in harmony with the position assumed in the case of Winslow, that the Home Secretary has informed him that he differs from the Canadian Judges, and calls attention to the case of the "Lennie" mutineers, heard on the 5th of May in London.

This case, as I apprehend, would be governed by the French Treaty, made under the Law of 1870, and by that Act, and, if so, would be in no way applicable to the present discussion.

You will furnish Lord Derby with a copy of this instruction.

I am, &amp;c.

(Signed)

HAMILTON FISH.

No. 8.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, June 7, 1876.*

I TRANSMIT to you herewith a copy of a despatch from Mr. Fish to the United States' Chargé d'Affaires which has been communicated to me by the latter as an answer



to my note of the 4th ultimo.\* It contains various arguments in support of the view taken by the United States' Government of the Winslow extradition case, to which Her Majesty's Government will be prepared if necessary to reply in due course, but makes no reference to a new Treaty.

I have requested you to-day by telegraph to report to me whether you have received any answer from the United States' Government to the proposals contained in my telegram of the 29th ultimo.

I am, &c.  
(Signed) DERBY.

## No. 9.

*Sir E. Thornton to the Derby.*—(Received June 8, at night.)

(Telegraphic.)

*Washington, June 8, 1876.*

I HAVE received your telegram of the 29th ultimo. Mr. Fish says that the United States' Government cannot possibly, under the pressure of what it considers to be, in the case of Winslow and the others, a violation of the 1842 Treaty, negotiate any new Treaty; and that his Government would not venture under these circumstances to propose such a measure to the Senate. He considers also that, for the reasons stated in his despatch to Colonel Hoffman of the 22nd ultimo, and some others, that it would be impossible for the United States' Government to conclude a new Treaty in accordance with the provisions of the British Extradition Act.

## No. 10.

*Colonel Hoffman to the Earl of Derby.*—(Received June 9.)

My Lord,

*Legation of the United States, London, June 9, 1876.*

I HAVE the honour to acknowledge the receipt of a copy of correspondence respecting extradition which your Lordship has had the goodness to send me.

Referring to Lord Tenterden's note to Mr. Liddell No. 229, I beg to correct a misapprehension as to the suggestion therein referred to as made by me.

Speaking of the chances of making a new Treaty and the difficulties in the way, I ventured to suggest, that if we should find it impossible to agree upon all the Articles of a new Treaty, we might amend the old one by adding to it such Articles as we were agreed upon. I had no intention to suggest a particular amendment as the means of meeting the present difficulty.

I have, &c.  
(Signed) WICKHAM HOFFMAN.

## No. 11.

*Mr. Liddell to Lord Tenterden.*—(Received June 10.)

My Lord,

*Whitehall, June 9, 1876.*

REFERRING to previous correspondence, I am directed by Mr. Secretary Cross to transmit to you the accompanying copy of a letter from the Solicitor of the Treasury, reporting that the hearing of the application to discharge Brent, an American extradition prisoner, was adjourned on this day by Mr. Justice Lindley to be heard before the Court *in banco* on the 15th instant, the same day to which the application in Winslow's case stands adjourned.

I have, &c.  
(Signed) A. F. O. LIDDELL.

## Inclosure in No. 11.

*Mr. Stephenson to Mr. Liddell.*

Sir,

*Solicitor's Department, Treasury, June 9, 1876.*

REFERRING to your letter of the 2nd of June, forwarding certain papers, all herewith returned, and a notice from Messrs. Humphreys of their intention to apply to a Judge at Chambers on this day for an order to discharge one Brent, a prisoner, whose surrender has been applied for by the United States, and requesting me to instruct the Attorney-General to apply to have the application postponed to the same day to which Winslow's case is postponed, I beg to report that I instructed the Attorney-General accordingly, and attended with him at Chambers this day, when Mr. Justice Lindley declined to adjourn the application to be made before a Judge at Chambers, but adjourned it to be heard before the Court *in banco* on the 15th, the same day to which the application in Winslow's case stands adjourned.

Mr. Justice Lindley's endorsement on the letter of instructions being, "Refer to Court on 15th. J. L., 9th June, 1876."

I am, &amp;c.

(Signed) A. K. STEPHENSON.

## No. 12.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, June 10, 1876.*

WITH reference to my note of the 3rd instant, I have the honour to inform you that the hearing of the application for the discharge of Brent was adjourned yesterday by Mr. Justice Lindley to be heard before the Court in Banco on the 15th instant, the same day to which the application in Winslow's case stands adjourned.

I have, &amp;c.

(Signed) DERBY.

## No. 13.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, June 10, 1876.*

I HAVE the honour to acknowledge the receipt of your note of the 6th instant, forwarding copy of an instruction addressed to you by Mr. Fish in regard to the Winslow extradition case, and I beg leave to acquaint you, in reply, that I have referred your note to Her Majesty's Secretary of State for the Home Department.

I have, &amp;c.

(Signed) DERBY.

## No. 14.

*Sir E. Thornton to the Earl of Derby.—(Received June 11.)*

(Extract.)

*Washington, May 29, 1876.*

IT appears that the case of Lawrence was unexpectedly called up in the United States' Circuit Court on the 25th instant, and that General Butler, who has lately become Lawrence's counsel, stated that the prisoner wished to withdraw his former plea of not guilty and to plead guilty to the indictment which charges him substantially with the crimes for which he was surrendered by Great Britain.

The District Attorney, on being asked by the Judge whether he wished to move for immediate sentence, replied that he did not at present. General Butler then asked that the prisoner should be admitted to bail, pending sentence, which was allowed, and the bail was fixed at 15,000 dollars. This was at once furnished by Lawrence's wife and another person, who were present and prepared for the purpose.

Under the interpretation given by the United States to the Treaty of 1852, Lawrence is certainly open to prosecution for other crimes, if the Government should wish to



accumulate sentences against him. If I were to ask Mr. Fish officially whether the Government intended to prosecute him further, he would merely answer me that it claimed the right to do so; but I have good reason to believe that there is no intention to try Lawrence on any other indictments.

## No. 15.

*Sir E. Thornton to the Earl of Derby.—(Received June 11.)*

My Lord,

*Washington, May 29, 1876.*

ON the receipt of your Lordship's telegram of the 26th instant, I called that evening on Mr. Fish at his house, and communicated to him its contents. Mr. Fish at once expressed his regret that Colonel Hoffman should have made any suggestion to your Lordship to the effect that the difficulty with regard to the extradition of Winslow might be met by an Additional Article to the Treaty of 1842. He said, however, that he had, as yet, received no information upon the subject from Colonel Hoffman, and that he would prefer not saying anything more that evening, but hoped to see me the next morning at the State Department, when he might have received some communication from Colonel Hoffman.

I had the honour to telegraph to your Lordship the principal points of the conversation which we had on that morning.

In the evening of that day I received from Mr. Fish a memorandum, for which I had not asked, of the conversation which we had had in consequence of your Lordship's telegram. Although its contents were correct as far as they went, many points which I considered of importance were entirely omitted. I therefore called again at the State Department this morning, when he explained more fully what he had meant to say on Saturday, and drew up another Memorandum, which, at his request, I signed.

Of this Memorandum I have the honour to inclose a copy. There was one point, however, upon which he and I differed. I had understood him to say that in any new Treaty which might be made, the United States would be willing to come to a simple agreement that no one should be surrendered for a political crime without any stipulation being necessary as to the particular authorities before whom the accused might prove that the crime for which his surrender was asked was of a political nature. But this morning he insisted that he said that the United States would agree simply that no surrendered criminal should be tried for a political crime, thus transferring the decision of what was a crime from the surrendering to the demanding Government.

I assured Mr. Fish that I had not so understood what he had said on Saturday, but added that I would submit his observations to your Lordship, although I thought that Her Majesty's Government would find great difficulty in agreeing to such a proposition. Mr. Fish then said that if the two Governments should have the good fortune to be able to agree upon all other points, he would not say positively that the Government of the United States might not also accede to a simple stipulation that no one should be surrendered for a political crime, thus leaving it to the surrendering Government to decide whether the crime for which extradition was asked was a political crime; whilst, if it were agreed that the criminal might be tried for any and all the crimes enumerated in the Treaty the demanding Government would be at liberty to decide whether any other of these crimes for which he was open to trial was, under the circumstances, a political crime.

I have, &c.

(Signed) EDWD. THORNTON.

## Inclosure in No. 15.

*Memorandum of a Conversation between Sir E. Thornton and Mr. Fish, at the Department of State, Saturday, May 27, 1876.*

SIR EDWARD THORNTON read a telegram from Lord Derby stating, in substance, that Mr. Hoffman, the United States' Chargé in London, had suggested to him that an Additional Article to the Treaty of 1842 might be negotiated, and he (Lord Derby) thereupon proposed that an Article similar to the IIIrd Article of the *projet* of a Treaty which was under consideration between Sir Edward and Mr. Fish in June, 1873, which proposed

to restrict the trial of a surrendered fugitive to that for the specific crime for which he may have been surrendered, and to which Article he said Mr. Fish had proposed an amendment prescribing the time within which the fugitive might be at large after trial or discharge before he could be arrested for trial on another offence, and during which he should be at liberty to return to the country by which he had been surrendered. That if this proposal be accepted by the United States, he (Lord Derby) would sign the new Article in London with Mr. Hoffman, or Sir Edward Thornton would be authorized to sign it here with Mr. Fish.

Mr. Fish, in reply, expressed regret and surprise that Mr. Hoffman should have made any suggestion on the subject, and assured Sir Edward Thornton that Mr. Hoffman had no authority from his Government to make or to entertain any such proposition or suggestion, but that he was strictly limited to the conveyance of specific instructions from his Government so far as relates to any question affecting the construction of the Extradition Treaty between the two Governments, and Mr. Fish requested Sir Edward Thornton to assure Lord Derby to this effect. Mr. Fish added that he endeavours to give Mr. Hoffman instructions on that particular question which should be read to Lord Derby, and not to leave anything for oral representation or oral discussion, in order to avoid the possibility of any misapprehension from telegrams or other cause.

With regard to the proposition for negotiating an additional Article to the Treaty of 1842, he remarked that although he might have been willing in the negotiations of 1873 to have inserted the Article now proposed in a Treaty which gave to the United States the improvements which it desired in the Treaty of 1842, of a larger list of extradition crimes and other advantages, it could not be expected that the United States would now accept the limitations and restrictions upon what it holds to be its rights under the Treaty without obtaining any of the advantages for which such limitation might have been accepted.

That the United States is extremely anxious to reach a satisfactory settlement of the difficulties which have been interposed in the execution of the Treaty, but that the proposed Article would impose upon the United States the limitation which it denies to exist under the Treaty, and would secure no one advantage which it desired, and no improvement upon the Treaty of 1842.

And further, that in view of the argument which has been advanced by the British Government of the controlling form of the Act of Parliament over all Treaties or arrangements for extradition made by Her Majesty's Government subsequent to its enactment, it might be claimed, and possibly not without some force, that an Article in amendment or additional to the Treaty of 1842, would bring that Treaty under the operation and control of the Act which this Government denies to be the case, and cannot consent to. It would be admitting away one of the grounds on which the United States stands.

He referred to what he considered defective features in the British Act of 1870, which he thought made it unequal in its provisions as to the British and to the foreign Government, and as wanting in reciprocal powers and rights.

He further said that he thought it unwise to attempt to patch up the Treaty of 1842, that the present would not be a propitious moment for such efforts, and that whenever anything is attempted in the way of altering that Treaty it would require a more general revision, and especially an enlargement of the list of extradition crimes.

Mr. Fish added that the United States would not object in any negotiation, to be hereafter entered upon, that a Treaty should provide to the effect that a surrendered criminal shall not be tried for any crime or crimes other than such as are of the class enumerated in the Treaty as extradition crimes, nor be tried for any political offence.

In this connection he referred to the Treaty negotiated in 1852 between Great Britain and France (signed by Lord Malmesbury and Count Walewski), which contained a provision to that general effect.

And upon Sir Edward Thornton observing that the Act of 1870 would prevent the British Government from agreeing to such a stipulation, Mr. Fish asked whether Her Majesty's Government could not obtain from Parliament a special enabling or ratifying Act for the particular Treaty which might be negotiated between the two countries.

Mr. Fish further said that with such provision in a Treaty, and with the similarity of feeling of the two Governments and of their people on the question of political asylum, a full protection would be secured against the trial of a surrendered fugitive for any political offence; and that the violation of such provision by either of these two Governments was not within the reach of contemplation, but should it occur it would lead to the denunciation of the Treaty by the surrendering State, which would also be at liberty to hold the offending State to its responsibilities for violating a Treaty engage-



ment, the Treaty would be broken by an act in violation of its terms; whereas, if the State, on which the demand for surrender is made, decide that such demand being made (as it must be) for one of the extradition offences is really designed to bring the fugitive to trial for a political offence, and refuses surrender on that ground it would be an imputation on the good faith of the request, and upon the integrity of the demanding State, which would justly give rise to resentful feelings, and would equally lead to a denunciation of the Treaty by the State whose requisition has been refused, and whose honour and integrity has been questioned, and in this case the Treaty would fail, not for an act done, but for the questioning of the good faith of one of the parties.

(Signed) EDWD. THORNTON.  
HAMILTON FISH.

## No. 16.

*Mr. Lushington to Lord Tenterden.—(Received June 15.)*

My Lord,

*Whitehall, June 15, 1876.*

WITH reference to previous correspondence, I am directed by Mr. Secretary Cross to transmit to you, for the purpose of being laid before the Earl of Derby, the accompanying copy of a Report from the Treasury Solicitor stating that he attended at Judges Chambers before Mr. Justice Mellor on the hearing of the application for the discharge of Winslow, which was acceded to by the learned Judge; and that the case of Brent will not probably come before the full Court until Saturday or Monday next, when the Attorney-General will appear on whichever day is necessary.

I am, &c.

(Signed) GODFREY LUSHINGTON.

P.S.—I am to suggest, with reference to the letter from the Colonial Office of the 30th ultimo, inclosed in your letter of the 3rd instant, that notice of Winslow's discharge should be conveyed to that Department.

## Inclosure in No. 16.

*Mr. Stephenson to Mr. Lushington.*

Sir,

*Solicitor's Department, Treasury, June 15, 1876.*

REFERRING to your letter of yesterday, and to former correspondence on the Winslow and Brent extradition cases, I beg to report that I have attended at Judges Chambers this morning, before Mr. Justice Mellor, on the hearing of the application on the part of Winslow, which was adjourned by Mr. Baron Amphlett to Judges' Chambers for this day (the Attorney-General stated to the learned Judge the present condition of the negotiations between this country and the United States of America), and read to his Lordship your letter of yesterday. His Lordship, after hearing Mr. Clarke in support of the application for Winslow's discharge, made an order for his discharge as prayed. With respect to Brent's case, which was adjourned by Mr. Justice Lindley to the full Court for this day, I understand that in consequence of the Judges of the different divisions being all engaged in hearing the adjourned argument in the "Francisco" and "Strathelyde" collision, there is no Queen's Bench Division sitting, and will probably be none till Saturday or Monday next, and the Attorney-General is instructed to appear on the hearing of this application whenever it may come on in pursuance of your letter above referred to.

I am, &c.

(Signed) A. K. STEPHENSON.

## No. 17.

*The Earl of Derby to Colonel Hoffman.*

Sir,

*Foreign Office, June 15, 1876.*

WITH reference to my letter of the 31st ultimo, I have the honour to inform you that a letter has been received from the Home Department transmitting a copy of a report from the Solicitor to the Treasury stating that application was made at Judges'

Chambers to-day for the discharge of Winslow, when Her Majesty's Attorney-General attended and stated the present condition of the negotiations between this country and the United States, when, after hearing Counsel for the prisoner, the application was acceded to by the learned Judge.

I have &c.  
(Signed) DERBY.

## No. 18.

*The Earl of Derby to Colonel Hoffman.*

Sir, *Foreign Office, June 16, 1876.*  
I HAVE the honour to acknowledge the receipt of your letter of the 9th instant, calling attention to the letter from this Department to the Home Office of the 25th ultimo, published in the papers recently presented to Parliament respecting extradition, and explaining the intention of the suggestion which you were good enough to make with the view to the settlement of the questions which have arisen as to the interpretation of the Xth Article of the Treaty of 1842.

I have, &c.  
(Signed) DERBY.

## No. 19.

*Sir E. Thornton the Earl of Derby.—(Received June 25.)*

My Lord, *Washington, June 12, 1876.*  
I HAVE the honour to inform your Lordship that the House of Representatives received from the President on the 10th instant a Message transmitting, in answer to a Resolution of the 30th of March last, a Report from the Secretary of State, with accompanying papers, which presents the correspondence and condition of the question with regard to the construction of the Extradition Treaty with Great Britain.

The papers were referred to the Committee on Foreign Affairs, and ordered to be printed.

I have, &c.  
(Signed) EDWD. THORNTON.

## No. 20.

*The Earl of Derby to Colonel Hoffman.*

Sir, *Foreign Office, June 30, 1876.*  
HER Majesty's Government have had under their consideration the despatch from Mr. Fish of the 22nd of May, which you did me the honour of communicating to me on the 6th instant, in regard to the Winslow extradition case, and I have now the honour of stating to you the observations which Her Majesty's Government are desirous of offering in reply.

In the first place, I must repeat that Her Majesty's Government have always maintained that it is an essential principle of extradition, as permitted or practised by this country, that a person surrendered on an Extradition Treaty can be tried for the offence for which he is surrendered, and for no other offence previously committed.

They have maintained, and must continue to maintain, that this is the proper construction of the Treaty of 1842; that it is the meaning which at the time was attached, and which has since continued to be attached by this country to that Treaty; and that it is the meaning which they had understood was attached to that Treaty by the Government of the United States.

Upon this, which Her Majesty's Government cannot but regard as the cardinal question in the case, little or nothing is said in Mr. Fish's despatch. He dwells at length upon the Act of 1870, and upon the arguments by which he maintains that the Treaty of 1842 ought not to be affected by that Act. Her Majesty's Government look upon the applicability of that Act as an important, but still as an entirely subordinate question in



the case. If that Act did not exist, Her Majesty's Government would feel themselves equally bound to maintain the position which they have taken upon the construction of the Treaty of 1842.

It is desirable to advert again to the provisions of that Treaty. It provides that Her Majesty would deliver up to justice persons seeking an asylum, or found within her territories, charged with certain crimes committed within the jurisdiction of the United States. But this is not to be done unless such evidence of criminality is given, as according to the law of this country would justify the apprehension and committal of the person, if the crime had been committed in this country.

The meaning of this stipulation obviously is that the country which is called upon to surrender a person who is under its protection may know both the crime of which that person is accused, and also that the evidence discloses facts which would amount to that crime according to the law of the surrendering country.

Her Majesty's Government know what facts would constitute, according to British law, the crimes of murder or arson, or forgery, or the utterance of forged paper. But they do not know what facts would constitute those crimes according to the law of other countries. They maintain the right of asylum until criminality, according to the law of this country, is shown. If a person within the jurisdiction of Her Majesty were accused of arson, and the evidence did not establish a case of arson according to British law, Her Majesty's Government would refuse the extradition; but if the same person were demanded upon an allegation of forgery, and a *prima facie* case of forgery, according to British law, having been established, he were surrendered, and were afterwards to be tried, convicted, and punished for that which might be arson by foreign law, but is not by the law of this country, he would be convicted and punished for the very offence for which his surrender had been in the first instance refused.

These considerations apply more forcibly in the case of political offences.

Her Majesty's Government do not suggest that the Government of the United States would desire or seek the surrender of political refugees, but the construction of Treaties of this kind must be general, and the same words cannot have different meanings when applied to different countries.

One main object of requiring evidence to be adduced, not merely establishing an offence called by the name of the offence specified in the Treaty, but establishing the offence of that name according to the law of the surrendering country is to prevent the surrender of a person being made upon a charge of a crime of equivocal and uncertain meaning, and a trial being subsequently had upon facts which would be considered here as establishing a political offence, and not the crime for which the surrender was made.

Mr. Fish indeed contends that the risk as to extradition for offences really political may be disregarded; but Her Majesty's Government cannot regard as satisfactory the only security against this risk which he offers.

The circumstances alleged to constitute any one of the offences specified in the Treaty may be such as to show the close connection of political considerations with the offence charged, and the surrendering country, which must be the judge of whether the offence is, or is not, political, must have an opportunity of exercising this judgment by the facts of the case being presented to it.

There may be no political considerations connected with the offence for which a prisoner is surrendered, while there may be political considerations connected with the offence for which he is tried; but if a prisoner is surrendered on the one charge and tried on the other, the political ingredient is withdrawn from the judgment of the surrendering country.

Mr. Fish's answer to this difficulty is that no administration would dare to violate the rights of political asylum by obtaining a prisoner on one charge, and trying him for a political offence.

Now, if the Government of the United States were the masters of the prosecution Her Majesty's Government might accept this assurance. But Mr. Fish, at the same time that he offers this assurance, informs Her Majesty's Government that if the offence is one against the laws of one of the States, the Attorney-General of the United States has no power to interfere, directly or indirectly, nor has the President any power to control the proceedings, or even to pardon those tried and convicted.

It must be apparent from these considerations that the objects so carefully provided for by the stipulations of the Treaty would be wholly frustrated if a person surrendered upon the allegation and proof of one offence were afterwards to be tried for other offences not alleged or proved as a ground of surrender.

Her Majesty's Government consider that this conclusion is the necessary result of the provisions in the Treaty itself; but they are able to adduce the strongest possible

contemporaneous evidence that this was the meaning placed upon the Treaty by both parties to it.

Her Majesty's Government, upon the conclusion of the Treaty, immediately applied to Parliament for power to give effect to surrenders according to its provisions. By the 3rd section of the Act of 1843 (6 & 7 Vict. c. 76) Her Majesty's Secretary of State is authorised to order the delivery of the person committed on the charge of the specified offence to an officer who is, in the words of the Statute, "to convey such person to the territories of the United States, to be tried for the crime of which such person shall be so accused."

The words of this Statute sufficiently attest the meaning attached to the Treaty by the Parliament of Great Britain.

The Act of Congress of August 12, 1848, c. 47, s. 3, is the best exposition of the construction put upon the Treaty by the United States.

It is in these words:—

"It shall be lawful for the Secretary of State to order the person so committed to be delivered up to such person or persons as shall be authorized in the name and on behalf of such foreign Government, to be tried for the crime of which such person be so accused."

Her Majesty's Government have stated that they had reason to believe, until the present controversy arose, that the Government of the United States continued to place upon the Treaty of 1842 the same construction which it was thus originally supposed to bear.

They consider that they were justified in entertaining this belief by the course taken by Mr. Fish in 1871, 1872, and 1873, as detailed in my note of the 4th ultimo.

During these years the draft of a new and extended Treaty of Extradition was under negotiation between Her Majesty's Government and the Government of the United States. That draft Treaty, as proposed by Her Majesty's Government, contained this Article:—

#### "ARTICLE VI.

"When any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall not, until he has been restored or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered."

Alterations in the draft Treaty were proposed by the Government of the United States, to some of which Her Majesty's Government were willing to accede, although upon one Article, that relating to political offences, they were unable to agree to a form of procedure satisfactory to the Government of the United States; but throughout the whole of the negotiation no objection whatever was made by Mr. Fish to the VIth Article, which on both sides was assumed to be nothing more than the expression of the principle of extradition as it then stood.

Indeed, Mr. Fish not merely made no objection to the Article, but he gave his distinct approval by appending to it a paragraph emphasizing its provisions in these words:—

"No person shall be deemed to have had an opportunity of returning to the country whence he was surrendered, until two months at least shall have elapsed after he shall have been set at liberty and free to return."

In opposition to these arguments drawn from the construction of the Treaty, and from the exposition of it admitted by both the Contracting Parties, Her Majesty's Government cannot admit the propriety of placing, as Mr. Fish is disposed to do, the dicta of text-writers, or the opinion expressed by the late Under-Secretary of State in his evidence given before a Committee of the House of Commons.

As to the case of Heilbronn, Her Majesty's Government much regret that a charge was made against this prisoner not justified by the extradition warrant under which he was received; but, though the charge was preferred according to the ordinary forms of criminal procedure in Her Majesty's name, it is the well-known course of law in this country that every private individual has the power of presenting an indictment, while, as a matter of fact, the presenting or finding of that indictment is entirely unknown to any person representing the Executive Government.

Her Majesty's Government must repeat that this departure from the extradition warrant in the case of Heilbronn was not the act of Her Majesty's Government, nor was it called to their attention or known to them; and Her Majesty's Government are not now aware of any other instance which has occurred in this country during the long period that has elapsed since 1842, where a person surrendered under the Treaty of 1842 has been



put upon his trial for an offence other than that in respect of which his extradition was demanded.

As to the cases in Canada referred to by Mr. Fish, the attention of Mr. Justice Ramsay in Rosenbaum's case appears to have been occupied with the question as to the consistency of the Act of 1870 with the Treaty of 1842, and with the question whether the prisoner on his trial could set up as a defence the irregularity of his extradition, both of which questions are collateral to the main argument.

With respect to the case of Worms it is to be regretted that the appeal from the order for his extradition was not permitted to proceed in due course, by reason of an Act of the Legislature of the Dominion, taking away the right of appeal in extradition cases, having passed after Worms' notice of appeal had been given.

It is not easy to appreciate the inference which Mr. Fish seeks to draw from a reference to the debate in the British Parliament in 1866, since this debate exhibits in the most striking manner that the Secretary of State and Attorney-General affirmed distinctly the same principle of construction for which Her Majesty's Government now contend.

Lord Stanley said: "As to the proposal that the French Government should be required to enter into an undertaking that they would not try any person for any offence other than that for which he had been given up, he thought that that would be a very feeble protection indeed; for, assuming for the sake of argument, that the French could act in the manner suggested—and he really begged pardon for assuming it even for that purpose—he could only say that a Power which could act in such a manner would not be bound by an undertaking of the kind proposed."

The present Lord Chancellor, then Attorney-General, in the course of the same debate, added: "With respect to the latter part of the honourable member's amendment, which required that the person should not be tried for any offence but that for which he had been given up, we should certainly have a well-founded complaint against any country that demanded a man to be given up for one offence and then proceeded to try and punish him for another. But, on the other hand, to put such words into an Act of Parliament, which did not exist in the Treaty, would only be offering a gratuitous insult to a foreign Power to whom it applied, without securing any real advantage."

It would thus appear that both the speakers treated as an impossible hypothesis that any State should do that which the United States' Government now claim to have the right to do.

It is the obvious inference that the objection made in 1866 to the condition then proposed was not that it was inconsistent with the Treaty obligations already in existence, but that it was an unnecessary demand that those Treaty obligations should be expressed in distinct words.

Mr. Fish states that I contend that the British Extradition Act of 1870 imposed no new condition upon the Treaty of 1842, and Mr. Fish then proceeds to suggest a doubt whether that contention is really relied upon.

Her Majesty's Government do undoubtedly and unreservedly maintain that the Act of 1870 imposes no condition new in substance upon the Treaty of 1842, inasmuch as the true meaning of that Treaty is that a person accused of a specified crime or specified crimes shall be delivered up to be tried for the crime or crimes of which he is accused; and an agreement between two Powers that the right of asylum, equally valued by both, shall be withdrawn only in respect of certain specified offences, implies, as plainly as if it were expressed in distinct words, that in respect of the offence or offences laid to his charge, and such offence or offences only, is the right of asylum so withdrawn, and that, as a consequence, independently of the Act of 1870, it is the duty of each Government to see that the Treaty obligations in that respect are recognized and observed by the receiving Power.

Her Majesty's Government think it unnecessary to repeat the view they have already expressed as to the extent to which the action of the Executive of this country is, in their opinion, fettered by the Act of 1870, and the more so because their previous references to that Act appear to have led Mr. Fish to fail to appreciate the view of Her Majesty's Government of the effect of the Treaty of 1842, even if the Treaty had stood alone.

Mr. Fish states that the case of Winslow was alone the subject of requisition at the date of his despatch, and that the case of Winslow seems to have been overshadowed by the case of Lawrence.

Her Majesty's Government, however, desire to point out that it was with reference to the case of Lawrence that the question at issue between the two Governments arose, and the case of Lawrence has throughout been assumed to govern the other cases.

Lawrence was surrendered to the Government of the United States upon a charge of

forgery. He was indicted in the United States on a charge for smuggling, which is not one of the extradition offences. Mr. Fish, in his despatch of the 24th of May, states that this indictment for smuggling was found against Lawrence before the demand for his extradition. This may be so, but Lawrence was arrested and held to bail, on this indictment for smuggling, after his extradition. And it would appear that Mr. Fish himself stated to Sir E. Thornton on the 27th of November that, though Lawrence had not then been arraigned for any other crime than that for which he was given up, he had given bail to appear (for other crimes). These proceedings in the indictment for smuggling, taken after extradition, made the case in substance the same as if he had been indicted for smuggling after the extradition.

Had these proceedings been taken *per incuriam*, or had they been disavowed by the Government of the United States, Her Majesty's Government would have gladly accepted such an explanation. The Government of the United States, however, justifies these proceedings and maintains distinctly and unreservedly their right to try Lawrence, if they so think fit, upon this additional charge; and they maintain that this is the meaning and construction which they place upon the Treaty of 1842.

Under these circumstances, this issue, having been distinctly raised by the Government of the United States, and distinct notice having been given by them to Her Majesty's Government of the construction which they place upon the Treaty, Her Majesty's Government have been forced, most reluctantly, to come to the conclusion that they could not surrender Winslow and the other prisoners lately in custody without appearing to admit the claim of the Government of the United States, and without exposing, in a manner which they are not justified in doing, the persons whose surrender is asked for, to be dealt with as Lawrence has been dealt with, and as he is claimed to be dealt with.

Her Majesty's Government, sharing to the fullest degree the regret expressed by Mr. Fish that any difference of opinion as to the interpretation of the Treaty of 1842 should lead to its termination, informed you on the 26th ultimo of their readiness to sign an additional Article to the Treaty in the words of the draft Article to which Mr. Fish gave his assent throughout the negotiations which were carried on in the years 1872, 1873, and 1874, with the addition which he himself then suggested.

On learning that this offer was not acceptable to Mr. Fish, although he expressed his willingness to make a new and enlarged Treaty, Sir E. Thornton was authorized to propose the immediate signature of a Treaty containing the Articles agreed upon in the draft Treaty of 1874, with the addition of a further clause intended to meet an objection formerly made by Mr. Fish on a question of procedure in reference to political offences.

This draft Treaty contained a full and complete list of crimes agreed upon with the Government of the United States, and Her Majesty's Government hoped that this proposal might have been accepted by the Government of the United States before the time when the release of Winslow became necessary had arrived. It was therefore with sincere regret that they learnt by a telegram from Sir E. Thornton, dated the 8th instant, that Mr. Fish considered it impossible to negotiate a new Treaty under the pressure of what he looked upon as a menace of violation of the Treaty of 1842.

Her Majesty's Government desire unreservedly to express their belief that the Government of the United States, in maintaining the argument which Mr. Fish expresses, are actuated by a sincere desire to maintain and discharge the rights and duties which in their judgment flow from the Treaty obligations of 1842, and Her Majesty's Government claim for themselves to have the same construction placed upon the motives which have influenced them during these negotiations.

Her Majesty's Government would recoil from any course which would have the appearance of a failure on their part to comply with what they consider to be the obligations laid by Treaty upon them, and they deeply regret that it should have been supposed that, in negotiations with a country so closely connected with their own as is that of the United States, they could use any argument having the appearance of a menace, and, above all, a menace of the infraction of a Treaty, as a means of obtaining a Treaty in a different form.

Her Majesty's Government are persuaded that to continue to act on the present Treaty, so long as one construction is put upon its provisions by Her Majesty's Government and a different construction by the Government of the United States, must lead to misunderstandings and reclamations of the most serious kind. They would, on the other hand, deeply deplore that the arrangements for extradition between this country and the United States, which have continued so long and operated so beneficially, should be for any length of time suspended; and Her Majesty's Government have been and are prepared at any moment to join with the Government of the United States, if they are disposed to do so,



in considering without bias or prejudice the terms of a new and, if necessary, an enlarged Extradition Treaty between the two countries, which, while it will protect sufficiently the right of asylum, may prevent that right being so used as to afford impunity for crime.

I am, &c.

(Signed) DERBY.

No. 21.

*Sir E. Thornton to the Earl of Derby.—(Received July 4.)*

My Lord,

*Washington, June 22, 1876.*

I HAVE the honour to inclose a copy of a Message which was sent to Congress on the 20th instant by the President with regard to the refusal of Her Majesty's Government to surrender Winslow and other fugitive criminals, except on condition that they should be tried only for the crime for which they would be surrendered.

Your Lordship will perceive that the President states that the position taken by Her Majesty's Government cannot but be regarded as the abrogation and annulment of the Xth Article of the Treaty of 1842. He adds that the United States' Government could not, under the circumstances, either demand or grant the surrender of fugitive criminals.

The President concludes by leaving it to Congress to determine whether the above-mentioned Article is any longer to be regarded as obligatory upon the Government of the United States.

I have, &c.

(Signed) EDWD. THORNTON.

Inclosure in No. 21.

*Message from the President of the United States respecting the Extradition Treaty with Great Britain.*

THE Speaker *pro tempore*. The Chair lays before the House a Message from the President of the United States, which the Clerk will read.

The Clerk read as follows:—

“To the Senate and House of Representatives :

“By the Xth Article of the Treaty between the United States and Great Britain, signed in Washington on the 9th day of August, 1842, it was agreed that the two Governments should, upon mutual requisitions respectively made, deliver up to justice all persons who, being charged with certain crimes therein enumerated, committed within the jurisdiction of either, should seek an asylum or be found within the territories of the other.

“The only condition or limitation contained in the Treaty to the reciprocal obligation thus to deliver up the fugitive was that it should be done only upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged should be found, would justify his apprehension and commitment for trial if the crime or offence had there been committed.

“In the month of February last a requisition was duly made, in pursuance of the provisions of the Treaty, by this Government upon that of Great Britain for the surrender of one Ezra D. Winslow, charged with extensive forgeries and the utterance of forged paper, committed within the jurisdiction of the United States, who had sought an asylum and was found within the territories of Her Britannic Majesty, and was apprehended in London. The evidence of the criminality of the fugitive was duly furnished and heard, and, being found sufficient to justify his apprehension and commitment for trial, if the crimes had been committed in Great Britain, he was held and committed for extradition.

“Her Majesty's Government, however, did not deliver up the fugitive in accordance with the terms of the Treaty, notwithstanding every requirement thereof had been met on the part of the United States, but, instead of surrendering the fugitive, demanded certain

assurances or stipulations not mentioned in the Treaty, but foreign to its provisions, as a condition of the performance by Great Britain of her obligations under the Treaty.

"In a recent communication to the House of Representatives and in answer to a call from that body for information on this case, I submitted the correspondence which has passed between the two Governments with reference thereto. It will be found in Executive Document No. 173 of the House of Representatives of the present Session, and I respectfully refer thereto for more detailed information bearing on the question.

"It appears from the correspondence that the British Government bases its refusal to surrender the fugitive and its demand for stipulations or assurances from this Government on the requirements of a purely domestic enactment of the British Parliament, passed in the year 1870.

"This Act was brought to the notice of this Government shortly after its enactment, and Her Majesty's Government was advised that the United States understood it as giving continued effect to the existing engagements under the Treaty of 1842 for the extradition of criminals; and, with this knowledge on its part and without dissent from the declared views of the United States as to the unchanged nature of the reciprocal rights and obligations of the two Powers under the Treaty, Great Britain has continued to make requisitions and to grant surrenders in numerous instances without suggestion that it was contemplated to depart from the practice under the Treaty which has obtained for more than thirty years until now, for the first time, in this case of Winslow, it is assumed that under this Act of Parliament Her Majesty may require a stipulation or agreement not provided for in the Treaty as a condition to the observance by Her Government of its Treaty obligations toward this country.

"This I have felt it my duty emphatically to repel.

"In addition to the case of Winslow, requisition was also made by this Government on that of Great Britain for the surrender of Charles J. Brent, also charged with forgery committed in the United States and found in Great Britain. The evidence of criminality was duly heard and the fugitive committed for extradition.

"A similar stipulation to that demanded in Winslow's case was also asked in Brent's, and was likewise refused.

"It is with extreme regret that I am now called upon to announce to you that Her Majesty's Government has finally released both of these fugitives, Winslow and Brent, and set them at liberty, thus omitting to comply with the provisions and requirements of the Treaty under which the extradition of fugitive criminals is made between the two Governments.

"The position thus taken by the British Government, if adhered to, cannot but be regarded as the abrogation and annulment of the Article of the Treaty on Extradition.

"Under these circumstances it will not, in my judgment, comport with the dignity or self-respect of this Government to make demands upon that Government for the surrender of fugitive criminals, nor to entertain any requisition of that character from that Government under the Treaty.

"It will be a cause of deep regret if a Treaty which has been thus far beneficial in its practical operation, which has worked so well and so efficiently, and which, notwithstanding the exciting and at times violent political disturbances of which both countries have been the scene during its existence, has given rise to no complaints on the part of either Government against either its spirit or its provisions, should be abruptly terminated.

"It has tended to the protection of society and to the general interests of both countries. Its violation or annulment would be a retrograde step in international intercourse.

"I have been anxious and have made the effort to enlarge its scope, and to make a new Treaty which would be a still more efficient agent for the punishment and prevention of crime. At the same time I have felt it my duty to decline to entertain a proposition made by Great Britain pending its refusal to execute the existing Treaty, to amend it by practically conceding by Treaty the identical conditions which that Government demands under its Act of Parliament. In addition to the impossibility of the United States entering upon negotiations under the menace of an intended violation or a refusal to execute the terms of an existing Treaty, I deemed it unadvisable to treat of only the one amendment proposed by Great Britain, while the United States desires an enlargement of the list of crimes for which extradition may be asked, and other improvements which experience has shown might be embodied in a new Treaty.

"It is for the wisdom of Congress to determine whether the Article of the Treaty relating to extradition is to be any longer regarded as obligatory on the Government of the United States, or as forming part of the supreme law of the land. Should the attitude of



the British Government remain unchanged, I shall not, without an expression of the wish of Congress that I should do so, take any action either in making or granting requisitions for the surrender of fugitive criminals under the Treaty of 1842.

Respectfully submitted.

(Signed) "U. S. GRANT.

"Washington, June 20, 1876."

*Mr. Banks.*—I move that the message of the President just read be referred to the Committee on Foreign Affairs, and that it be printed.

The motion was agreed to.

No. 22.

*Colonel Hoffman to the Earl of Derby.*—(Received July 6.)

My Lord, *Legation of the United States, London, July 5, 1876.*

REFERRING to my note of the 26th April, I am instructed by Mr. Fish to correct an error in my reading of the cypher telegram from him, referred to in that note. Your Lordship had requested me to ascertain from Mr. Fish whether the United States' District Court was possessed of certain powers. I wrote accordingly. Mr. Fish replied by telegraph, acknowledging the receipt of my despatch, and adding "has eight." This word I decyphered "right." Substituting the word "eight" for "right," I find that the despatch could not have been intended to be communicated to your Lordship as an answer to your inquiry.

I have, &c.  
(Signed) WICKHAM HOFFMAN.

NORTH AMERICA. No. 2 (1876).

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FURTHER CORRESPONDENCE respecting Extradition.

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*Presented to both Houses of Parliament by Command of Her Majesty. 1876.*

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LONDON:

PRINTED BY HARRISON AND SONS,



NORTH AMERICA. No. 3 (1876).

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CORRESPONDENCE

RESPECTING THE

EXTRADITION OF BENNET G. BURLEY.

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*Presented to the House of Commons by Command of Her Majesty, in pursuance of their  
Address dated July 5, 1876.*

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RETURN to an Address of the Honourable the House of Commons, dated July 5, 1876:

for—

“A Copy of Correspondence between the English Government and the Government of Canada in the matter of the Extradition of a prisoner of the name of Caldwell to the United States, in the years 1870 and 1871:

“And, of any Correspondence in the case of another prisoner of the name of Burley, surrendered at an earlier period.”

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No. 1.

*Mr. Dalglish, M.P., to Mr. Layard.—(Received February 25.)*

Sir,

February 24, 1865.

I HAVE been requested by Mr. Burley of Glasgow to forward to the Foreign Office the accompanying statement relative to his son, who has been given up to the United States, under the Extradition Treaty, having been claimed on a charge of theft. Mr. Burley fears that his son will not be tried before the United States' Courts on the charge of theft, which can be easily met, but on a charge of piracy, for which the punishment will be death. Mr. Burley, therefore, as a British subject, asks for the good offices of the Foreign Office on behalf of his son, in so far that he may not be tried on any other charge than that on which the claim was made for his extradition.

I have only further to assure you that Mr. Burley is a respectable man.

I am, &c.

(Signed) ROBERT DALGLISH.

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Inclosure in No. 1.

*Case of Bennet G. Burley, now extradited by the Canadian Authorities for an alleged robbery of 20 dollars, in connection with the taking of the steamers “Philo Parsons” and “Island Queen,” on Lake Erie.*

BURLEY has held the commission of Acting Master in the Confederate navy since September 1863; was captured by the Federals in May 1864, and escaped in the succeeding July; went to Canada in order to get back to Richmond; and while there joined the expedition for the release of the Confederate prisoners on Johnson's Island, but was guiltless of taking the money from Ashley. This can be proven, provided the trial can be had where the witnesses in his behalf would be free to give their evidence.

The following letter from the Toronto “Leader” gives a true statement of the case:—

To the Editor of “The Leader.”

“Sir,

“In the case of Burley the Courts have decided in favour of his extradition on the charge of robbery. This decision is sustained exclusively by the testimony of Ashley, clerk of the steamer ‘Philo Parsons,’ Burley only urging as a defence the admitted fact that, at the time of the alleged robbery, he was acting under the orders of the Confederate States, whose officer he was, on an expedition for the release of his fellow-soldiers, prisoners of war at Johnson's Island. As this expedition was for the glorious and noble purpose of releasing them from a captivity the suffering and cruelty of which is so notorious as to have attracted the attention and enlisted the sympathy of the people of England, and as the expedition was in no sense for plunder, and there really was none, I beg to call public notice to the following statement of a gentleman engaged in the expedition as to what did actually occur, in order that the public may be possessed of the truth in the case. The gentleman making this statement is a man of the highest

honour and truth; and though he was not produced on the trial as a witness, for obvious reasons, yet his recitals, independent of the intrinsic truth they bear on their face, can be fully substantiated. He says:—

“Immediately after leaving Kelly’s Island the “Philo Parsons” was taken possession of in the name of the Confederate States. There was no violence used, and the passengers were publicly informed that themselves and property would be perfectly safe. The ladies and gentleman accompanying them were permitted to remain under guard in the ladies’ cabin, and were told that they would be put ashore at the first convenient landing. While wooding at Middle Bas Island the steamer “Island Queen” came alongside, and lashed herself to the “Parsons.” It being a matter of necessity, we took possession of her, capturing some thirty Federal soldiers. After wooding the passengers were all put ashore, the soldiers having been paroled not to bear arms against the Confederate States until exchanged. Before setting the passengers ashore I asked them if any of them had been despoiled of any property, and they all replied that nothing had been taken from any of them. We then left Middle Bas Island, the “Island Queen” in tow of the “Parsons.” We afterwards scuttled the “Queen,” and turned her adrift. We then steered for Sandusky Bay, for the purpose of capturing the United States’ war steamer “Michigan,” then lying off Johnson’s Island, guarding the prisoners confined there. A messenger was to have met us at Kelly’s Island, but failed to do so, for the reason that the officer in charge of the movement at Sandusky had been discovered and arrested that afternoon on board the “Michigan.” In addition, we were to have received signals from Sandusky Bay. Failing to receive the signals, a consultation was held; and it being feared that the plan had been betrayed, and the “Michigan” could not be surprised, it was determined to abandon the attack. We were at that time in full view of the “Michigan.” The “Parsons” was then put about, and steered for Detroit River. The intention was to burn the boat, but the risk of injury to British vessels and property induced us to desist, and we ran her to Sandwich, where she was abandoned. One of the passengers captured, giving his name as C. K. Minor, of July, New York, had a large amount of money, represented to me as 80,000 dollars, on his person. He expressed considerable uneasiness, and was intimating a proposition whereby he could save a part, but I told him the object of the expedition was not robbery or plunder, but the release of the prisoners on Johnson’s Island, and not one cent was taken from him. Another man, name not remembered, who was a sheriff or revenue officer, had exhibited on the passage a large roll of money, probably as much as 30,000 dollars. Not one cent of it was taken. Mrs. Favan, wife of Hon. J. J. Favan, editor of the Cincinnati “Enquirer,” was on board, and expressed to me her gratification at the polite and gentlemanly conduct of all the men engaged in the expedition. I positively deny the statement of Mr. Ashley, clerk of the “Philo Parsons;” it is false that Mr. Burley was in the office with Captain Bell, and false that Burley took 20 dollars, or any other sum, from him. Burley was at the time stationed at another part of the boat. What did occur was that Captain Bell and myself told Ashley that, having captured the boat, we considered the property of the boat as lawful prize, and we demanded from him the boat’s money. He handed over to us something about 90 dollars, reserving as much more, which he said was his individual property, and which he was permitted to keep. The whole amount taken was but a few dollars in excess of what we had paid him in the morning for our passage. Burley was dressed in dark-coloured clothing, while I was dressed in light-coloured clothes. Burley had no whiskers.’

“Burley in his application to the Recorder for time to send to Richmond, makes oath that he took no money from Ashley, and it is most clear that he is innocent of this charge. Ashley swears that Burley was dressed in light-coloured clothing, and had whiskers, while Nichols, the mate of the ‘Parsons,’ and he is the only other witness who testifies as to what occurred on the boat, swears that Burley was dressed in dark-coloured clothing and had no whiskers. It is charity to Ashley to say that he is mistaken as to the man who took the money.

“Is it reasonable, or rather is it not manifestly absurd, that this expedition should be characterized as one intended for robbery, or for any other than a legitimate military enterprise, when persons in the power of this Company, known to be in possession of thousands and tens thousands of dollars are permitted to go off with their money, and Burley and his associates should content themselves with the stealing of a paltry 20 dollar-greenback? In the eyes of any fair-minded man, does this transaction wear any of the badges of robbery, for which one is to be denounced as infamous. Burley is not charged with robbery in the United States, but the proceedings against him there are for piracy, as is shown by the testimony of Mr. Alfred Russell, United States’ Attorney, and if he is given up, he will be tried for that offence, the penalty of which is



death. In Canada he was first arrested upon a warrant sworn to, charging him with attempting to murder the engineer of the 'Island Queen.' That was abandoned; he was then arrested upon sworn information charging him with robbery of clothing from Nichols the mate, but when Nichols came he would not swear as had been sworn for him, and that charge was abandoned, and he was then arrested upon the charge of robbing Ashley, as false as the others. It must be apparent that the charges in Canada were mere pretext to secure the extradition to the United States where he is to be tried upon a charge that will take away his life, and when this brave Scotchman who has volunteered to fight the battles of the oppressed and down-trodden as well in the old country as in this, is delivered up to the relentless and cruel vindictiveness of the enemy seeking his life for an act done in the line of his duty, will not Canadians feel that their hands are stained with his blood.

"No attempt is made in this communication to attack the judgment of the Court, or to impeach their honesty, but it is simply to show how in the discharge of what they conceive to be their duty, a true and innocent man's life is forfeited; and I verily believe the day will come when these judges and this people will feel and know that they have committed a grave error in delivering up this noble and gallant young Briton to the sacrifice.

(Signed) "JUSTICE."

Burley's was a clear case of belligerency, ordered and ratified by his Government, and very similar to that of Acting Master Brain, who captured the Federal passenger steamer "Roanoke" on her passage from Havana to New York City.

## No. 2.

*Mr. Elliot to Mr. Hammond.—(Received February 23.)*

Sir,

*Downing Street, February 23, 1865.*

WITH reference to my letter of the 20th of January. I am directed by Mr. Secretary Cardwell to transmit to you, for the information of Earl Russell, the accompanying copy of a despatch from the Governor of Canada, inclosing a newspaper containing a report of the judgments in the case of Bennet Burnley, one of the persons concerned in the outrage on board the "Philo Parsons," in Lake Erie.

I am, &c.

(Signed) T. FREDK. ELLIOT.

## Inclosure 1 in No. 2.

*Viscount Monck to Mr. Secretary Cardwell.*

Sir,

*Quebec, January 30, 1865.*

REFERRING to former communications on the case of Bennet Burnley, accused of robbery within the territories of the United States, and for whose extradition an application has been made by the authorities at Washington, I have the honour to transmit, for your information, a copy of the Toronto "Globe" Newspaper, containing a report, which I have reason to believe is substantially correct, of the judgments delivered by the Judges before whom this man's case was brought on writ of Habeas Corpus.

I shall this day issue my warrant for the delivery of Burley to the authorities of the United States.

I have, &c.

(Signed) MONCK.

## Inclosure 2 in No. 2.

*Extract from the Toronto "Globe" of January 28, 1865.*

THE BURLEY CASE.—Yesterday judgment was given in the Practice Court in the Burley case. The Court was very crowded, chiefly by the friends of the prisoner. A

strong force of police were in attendance. The prisoner was seated in the body of the Court, well protected by turnkeys. On the Bench were Hon. W. H. Draper, Chief Justice, Queen's Bench; Hon. W. B. Richards, Chief Justice, Court Common Pleas; and Hon. J. Hagarty, Queen's Bench. Hon. John Wilson, Common Pleas, was not present, but the judgment he had prepared was read by Mr. Justice Richards.

### *Judgment of the Chief Justice.*

A writ of *habeas corpus* was granted yesterday by Mr. Justice Hagarty, addressed to the Keeper of the Common Gaol of this city, commanding him to bring before the Presiding Judge in Chambers, Bennett G. Burley.

This writ was drawn up as if issued under the *Habeas Corpus* Act, and not at common law. Mr. Justice Hagarty pointed out this to the prisoner's legal advisers who obtained the writ. It was granted upon an affidavit verifying a copy of the warrant of the commitment of the prisoner granted by the Recorder of the City of Toronto on January 20, 1865. To this affidavit are attached a copy of a duly certified copy of the information laid against the prisoner in the United States, and a copy of the warrant for his apprehension issued thereon, which, the affidavit states, were produced and proved before the Recorder, and that on the argument before the Recorder the prosecutor withdrew that information and warrant from the consideration of the Recorder, though it was objected for the prisoner that the same could not be so withdrawn, as it showed a different charge in the United States, and though the investigation in the Province could only be of the matter charged in the United States, and not of a new charge based on the same circumstances. The writ was granted also on the petition and affidavit of the prisoner.

The information charged that the prisoner, on the 19th September, 1864, on board the "Philo Parsons," a vessel belonging in whole or part to Walter O. Ashley, a citizen of the United States, such vessel being then upon the high seas, to wit, upon Lake Erie, feloniously made an assault on the said Ashley, and feloniously put him in bodily fear and danger of his life, and one promissory note issued by the Secretary of the Treasury of the United States of the denomination and value of 20 dollars, and in general use as currency, and being the property of the said Ashley and other persons, from the person and against the will of the said Ashley feloniously did steal, rob, &c., contrary to the Act of Congress, approved April 30, 1790, commonly called the Piracy Act. The warrant set out the foregoing information, and commanded the officer to whom it was addressed to arrest the prisoner to be dealt with according to the law.

Upon this *habeas corpus* the prisoner was this day brought before me at Chambers. The Keeper of the Gaol returned that the prisoner was in his custody upon a warrant of commitment annexed to the writ signed by the Recorder.

The return having been read and filed, a writ of *certiorari*, tested the 23rd of January, 1864, was produced, addressed to the Recorder, commanding him to send all informations, examinations, and depositions taken before or submitted to him touching the commitment of Bennett G. Burley, charged with robbery or piracy before the Chief Justice of Upper Canada, or other of the Justices of the Court of Queen's Bench presiding in Chambers at Osgoode Hall, immediately after the receipt of that writ. This writ was issued by the Clerk of the Court of Queen's Bench, and was tested in the name of the Chief Justice. It was returned under the hand and seal of the Recorder, with "all and singular the informations, depositions, and evidence had and taken before me against the within named" Burley annexed thereto.

The information was laid by Walter O. Ashley, of the city of Detroit, State of Michigan, one of the United States of America, who swore that on the 19th of September, 1864, on board the steamboat "Philo Parsons," an American vessel, owned by citizens of the United States of America, the same steamboat then being near Kelly's Island, in the waters of Lake Erie, in the State of Ohio, one of the United States of America, and within the jurisdiction of the said United States, one Bennett G. Burley, and one Captain Bell, with force and arms in and upon one Walter O. Ashley, informant, did make an assault, and him, the said Ashley, did put in bodily fear and danger of his life, and one promissory note issued by the Secretary of the Treasury of the said United States of the denomination and value of 20 dollars, in use as current lawful money of the said United States, and being the property of Walter O. Ashley and other persons named, from the person and against the will of the said Ashley, did then and there feloniously, and by force and violence, steal, take, rob, and carry away.

The depositions of Walter Oliver Ashley, of Dewitt Clinton Nicholls, and of Alfred Russell, against the prisoner, and of John Murray Price, of Stephen Frick Cameron, of



Frank Alfrey St. Lawrence, of John Morrison, of Robert Kennedy, of Wm. L. McDonald, of Arthur S. Barnes, and of Wm. W. Cleary, witnesses examined on behalf of the prisoner, were annexed to the writ of *certiorari*.

These depositions show that the steamboat "Philo Parsons" was owned by the informant, Ashley, and other citizens of the United States; that this vessel was a licensed passenger and freight boat, and was plying between the city of Detroit, in the State of Michigan, and the city of Sandusky, in the State of Ohio, and was accustomed to touch in this route at the Canadian port of Amherstburg, occasionally at Sandwich, and sometimes at Windsor, in Canada. Ashley was clerk on board the steamer. On Sunday evening, the 18th September, 1864, she was lying at the city of Detroit, and the prisoner came on board and said to Ashley that he intended to go down in the morning; that three of his friends were going with him, and requested the boat might stop at Sandwich to take them on board. Ashley told the prisoner that if he took the boat at Detroit and his party were ready, the boat would call for them at Sandwich. The prisoner came on board the next morning and reminded Ashley of his promise. The boat was stopped at Sandwich, and three persons came on board, without baggage or freight. They were well-dressed in the "Canadian style." The prisoner said his friends were taking a pleasure trip, and would probably stop at Kelly's Island. At Amherstburg, twenty men or more came on board, roughly dressed, and paid their fare for Sandusky. The only baggage taken on board at Amherstburg was a large old trunk, tied with a cord. In the ordinary course, the steamer should have reached Sandusky about 5 P.M. Neither the prisoner nor his three friends apparently recognized the men who came on board at Amherstburg. The boat reached Kelly's Island about 4 P.M., and proceeded south from the Island towards Sandusky, Kelly's Island being in the state of Ohio, and about five miles from the main shore of the United States. After proceeding about two miles, three men came up to Ashley, drawing revolvers, saying he was a dead man if he offered resistance. Two of them, as Ashley thought, came on board at Sandwich. At this time the prisoner came forward with a revolver in his hand, followed by from twenty-eight to thirty-five men, and levelled the revolver at Ashley, ordering him into the ladies' cabin, where Ashley immediately went, and from which he saw these parties arm themselves from the trunk brought on board at Amherstburg, most of them having two revolvers, and some having hatchets. The prisoner ordered a sulky and some pig iron which was on the deck to be thrown overboard, which was partly done. Two men guarded Ashley, and they told him they intended to capture the United States' steamer "Michigan," a war vessel. The prisoner acted as one having authority. His commands were obeyed. Another steamer called the "Island Queen" was captured by the same party, at Middle Bass Island, and the passengers were brought as prisoners on board the "Philo Parsons." A person named Captain Bell was of the prisoner's party, and gave some orders. He told Ashley he wanted him in the office. Ashley went there with him and the prisoner. Ashley requested permission to take off the boat's books. They refused. Ashley then said he had some private promissory notes, amounting to about 2,000 dollars. The prisoner took them, looked at them, said he could not collect them, and returned them to Ashley. Bell then said to Ashley "we want your money." He and the prisoner then had revolvers in their hands. Ashley swore he was in bodily fear, but did not consider his life in danger if he did their bidding. He opened the money drawer. There was very little money there. The prisoner then said "You have got more money; let us have it." Ashley took a roll of bills from his vest pocket and laid it on the desk. Bell took part and the prisoner took part, and they took the money in the drawer (about 10 dollars) between them. In the roll of bills taken by them, there was a 20 dollar note of the United States, commonly called "greenbacks," issued by the Secretary of the Treasury. It was in use as lawful current money of the United States at the time. It was legal tender for twenty dollars, and was the property of the owners of the boat. The prisoner took this money, as Ashley swore, against his (Ashley's) will. He was put in bodily fear and danger of his life at the time. Directly after the money was taken, Ashley was put on shore at Middle Bass Island by the prisoner and Bell, and the boats steered for Sandusky, with the "Island Queen" alongside, which last boat was cast adrift in about half-an-hour. Some of the party said they intended to release the prisoners on Johnson's Island, which is in the State of Ohio, about two miles, from Sandusky. The "Michigan" was lying off Johnson's Island, supposed to guard it. There are about 3,000 prisoners of war there, soldiers of the Confederate States.

Ashley stated there was a rebellion going on by the Southern States. He could not tell how many States. Captain Bell appeared to be in command of the party on board the "Philo Parsons." He did not say in Ashley's hearing he was in any service, nor for

what purpose he took the boat. There were about twenty-five United States' soldiers on board the "Island Queen," who were captured. The passengers were not prevented from taking their baggage.

Nicholls confirmed Ashley's testimony in most of the material particulars. He said that Bell came to him in the pilot-house and said he was a Confederate officer, and seized the boat and took him (Nicholls) a prisoner. But he also said the prisoner seemed to be the leader of them. He did not see the money taken. He heard the prisoner say, when the "Island Queen" was set adrift, that they had cut her pipes so that she would sink. They had taken every person from on board her. Afterwards the "Philo Parsons" was steered back towards Detroit. Before this, however, it seems that some of the passengers who were made prisoners were put on shore on the American territory. When, on the return, they had reached the mouth of the Detroit River, some of the party asked Nicholls where they were, and he told them "in Canadian waters;" and some of them said, "it was well for some of the vessels near them, or they would board them;" and they inquired if a certain banker did not live at Grosse Isle, in the Detroit River, and being told by Nicholls that one Ives lived there, they replied if it had not been so late they would go and rob him. A short distance above Amherstburg two men landed in a boat on the Canadian side.

At Fighting Island Nicholls and others, part of the crews of the "Philo Parsons" and "Island Queen," were put on shore, and the boat proceeded to Sandwich. Nicholls followed her, and in two hours got to Sandwich, and found her there deserted by the whole party, and a pianoforte, a mirror, and some other articles of the furniture belonging to the boat had been landed. Some of Nicholls' clothing was also taken away. One of the party wore Nicholls' india-rubber coat.

The male passengers who were taken were, before they were landed, sworn to keep silent as to the transactions for twenty-four hours. The females were asked to promise to do so, but it was not said in Nicholls' hearing why this was done.

When the "Island Queen" was cast adrift they were about fourteen miles from Johnson's Island, as the boat would have gone. When coming up the Detroit River some of the party said they had not made much by coming down. They had intended to take the "Michigan" if they could. They had a Confederate flag, and compelled Nicholls to assist in raising it on the "Philo Parsons" when the boat was on Lake Erie, returning towards the Detroit River. It was put about half way up the flagstaff.

The evidence of Mr. Russell proved certain papers or documents which are not returned to the writ of *certiorari*, and are, it is presumed, those which were offered in evidence before the learned Recorder, but to the reception of which the prisoner's counsel objected, and, as was stated in argument, were withdrawn on the part of the prosecution.

Mr. Russell stated that he was an attorney and counsellor of the Supreme Court of the United States. He said the offences charged against the prisoner in the United States and now in this province are the same, and are created by the municipal laws of that country, and are triable in the Erie County Court of the State of Ohio, and also in the Circuit Court of the United States at Detroit. That the crime, if tried in the Erie County Court in the State of Ohio, would be robbery, and nothing else; if tried in Detroit it would then be the crime of robbery on the lakes. That in his opinion this offence, if tried at Detroit, would be municipal piracy arising upon the lakes within the territory of the United States, and the offence in each case would be a statutory offence. The crime of robbery, if committed on land within the State of Ohio, could not be tried at Detroit. That if the acts charged here were done by the prisoner and others, "claiming to be, or being Confederates, as some of the Southern States' people are called since the civil war, in furtherance of a hostile design against the Government or people of the United States, these acts might be treated as acts of robbery, and would not merge in the offence of treason. I know of no doctrine of merger as to crimes similar to that in real estate. I should regard as robbery the taking of the money from the party on the boat, although they professed and had civil war objects in view, and although the other acts done were in furtherance of those objects."

On the part of the prisoner, evidence was given that in February and March 1864, the prisoner was seen in Richmond, in Confederate uniform, wearing a badge of military rank. He was also in Richmond in May 1863. It was proved that he was born either at Greenock or Glasgow, in Scotland. He was in Canada about the beginning of August 1864, and also in the month of October following. He had been a prisoner of war in a fort belonging to the United States, and had escaped. It was also proved that at Johnson's Island there is a military prison of the United States, and that there are about 2,600 prisoners there, consisting principally of Confederate officers. The witness



(Robert Kennedy) stated that he had been a captain in the Confederate States, and had escaped from this prison, and he was aware that an attempt was to be made sometime in September last to release the prisoners; that there is a Federal military force at the island, and a gunboat called the "Michigan." That he was in uniform when taken, and was treated, not as a rebel, but as a prisoner of war. Evidence was also adduced to prove the authenticity of the documents hereafter set out. They were received *sub modo* by the Recorder, and were the following:—

*" Confederate States of America, Navy Department,  
" Richmond, September 11, 1863.*

" Sir,

" You are hereby informed that the President has appointed you an Acting Master in the navy of the Confederate States. You are requested to signify your acceptance or non-acceptance of this appointment; and should you accept, you are to sign, before a Magistrate, the oath of office herewith forwarded, and forward the same with your letter of acceptance to this Department. Registered No.

" The lowest number takes rank.

(Signed) " S. R. MALLORY, *Secretary of the Navy.*

" Acting Master Bennet G. Burley,  
" Confederate States Navy, Richmond, Va."

On this there was the following endorsement:—

*" Confederate States of America, Richmond, December 22, 1864.*

" 2. I certify that the reverse of this page presents a true copy of the warrant granted to Bennett G. Burley, as an Acting Master in the navy of the Confederate States, from the records of this Department.

" In testimony whereof I have hereunto set my hand and affixed the seal of this Department, on the day and year above written.

(L.S.) (Signed) " S. R. MALLORY,  
" *Secretary of the Navy.*"

*" Confederate States of America.*

" 3. Whereas it has been made known to me that Bennett G. Burley, an Acting Master in the navy of the Confederate States, is now under arrest in one of the British North American Provinces, on an application made by the Government of the United States for the delivery to that Government of the said Bennett G. Burley, under the Treaty known as the Extradition Treaty, now in force between the United States and Great Britain; and whereas it has been represented to me that the demand for the extradition of the said Bennett G. Burley is based on the charge that the said Burley is a fugitive from justice, charged with having committed the crimes of robbery and piracy in the jurisdiction of the United States; and whereas it has further been made known to me that the accusations and charges made against the said Bennett G. Burley, are based solely on the acts and conduct of the said Burley in an enterprise or expedition made or attempted in the month of September last (1864), for the capture of the steamer "Michigan," an armed vessel of the United States, navigating the lakes on the boundary between the United States and the British American Provinces, and for the release of numerous citizens of the Confederate States, held as prisoners of war by the United States at a certain island called Johnson's Island; and whereas the said enterprise or expedition for the capture of the said armed steamer "Michigan," and for the release of the said prisoners on Johnson's Island, was a proper and legitimate belligerent operation, undertaken during the pending public war between the two Confederacies, known respectively as the Confederate States of America and the United States of America, which operation was ordered and sanctioned by the authority of the Government of the Confederate States, and confided to its commissioned officers for execution, among which officers is the said Bennett G. Burley:

" Now, therefore, I, Jefferson Davis, President of the Confederate States of America, do hereby declare and make known to all whom it may concern, that the expedition aforesaid, undertaken in the month of September last, for the capture of the armed steamer "Michigan," a vessel of war of the United States, and for the release of the prisoners of war, citizens of the Confederate States of America, held captive by the United States of America, at Johnson's Island, was a belligerent expedition ordered and undertaken under the authority of the Confederate States of America, against the United States of America, and that the Government of the Confederate States of America assumes the responsibility of answering for the acts and conduct of any of its

officers engaged in said expedition, and especially of the said Bennett G. Burley, an Acting Master in the navy of the Confederate States.

"And I do further make known to all whom it may concern, that in the orders and instructions given to the officers engaged in said expedition, they were especially directed and enjoined to 'abstain from violating any of the laws and regulations of the Canadian or British authorities in relation to neutrality,' and that the combination necessary to effect the purpose of said expedition 'must be made by Confederate soldiers and such assistance as they might (you may) draw from the enemy's country.'

"In testimony whereof I have signed this manifesto, and directed the same to be sealed with the seal of the Department of State of the Confederate States of America, and to be made public.

"Done at the City of Richmond, on the 24th day of September, 1864.

(Signed)

"JEFFERSON DAVIS."

"By the President,

(Signed)

"J. P. BENJAMIN, *Secretary of State.*"

Mr. M. C. Cameron objected to the sufficiency of the warrant and to the sufficiency of the evidence adduced before the Recorder to justify or sustain the warrant.

As to the warrant, he contended that it ought to set out the evidence upon which it was issued; that it should show that the Governor-General authorized and directed the Recorder to take proceedings against the prisoner, or that a proceeding against him had been originated in the United States.

I think none of these objections are sustainable. The authority of the Recorder is derived from and under the second section of chap. 6 of the Provincial Statute 24 Vict., which enacts that "upon complaint made upon oath or affirmation (in cases where affirmations can be legally taken instead of oaths) charging any person found within the limits of this Province with having committed, within the jurisdiction of the United States of America, any of the crimes enumerated or provided for by the Treaty, it shall be lawful for any (certain judges and officers, among whom is the Recorder) to issue his warrant for the apprehension of the party so charged, that he may be brought before him, and upon the said person being brought before him under the said warrant, it shall be lawful for such Judge, &c., to examine upon oath any person or persons touching the truth of such charge, and upon such evidence as according to the laws of this Province would justify the apprehension and committal for trial of the person so accused, if the crime of which he shall be so accused had been committed therein, it shall be lawful for such Judge or other officer to issue his warrant for the commitment of the person so charged to the proper gaol, there to remain until surrendered according to the stipulation of the said Treaty, or until discharged according to law, and the Judge shall thereupon forthwith transmit or deliver to the Governor a copy of all the testimony taken before him, that a warrant may issue upon the requisition of the United States for the surrender of all such persons pursuant to the said Treaty."

Nothing in this Act contained requires that the evidence adduced against the accused should be set forth in the warrant of commitment, and referring to the form in use or directed by Statute to be used in other cases of alleged crime, they do not contain the evidence by which the charge is supported so far as to justify a committal. The form given in the Act of the Imperial Parliament, 8 and 9 Vict., chap. 121, does not render it necessary, and as to this branch of the question, it states, "forasmuch as it hath been shown to me upon such evidence as by law is sufficient to justify the committal to gaol of the said A.B., pursuant to an Act, &c., entitles, &c., that the said A.B. is guilty of the said offence." The present commitment runs thus:—"And whereas, the said evidence so taken before me upon oath as aforesaid is such as according to the laws," &c. (following the language of the Statute), I take it that the word "forasmuch" is as much a word of recital as the word "whereas." Each word as used involves the operation of the fact recited, and the fact is that such evidence as the law renders necessary has been adduced before the officers issuing the warrant.

The Statute itself affords a complete answer to the other objections—for it gives the authority to arrest and commit without the previous intervention of the Governor-General and without requiring any previous proceedings in the United States.

Then, upon the sufficiency of the evidence to justify the apprehension and committal for surrender of the prisoner.

Before discussing this I must observe that I know of no authority—nor of any practice so established as to be deemed recognized by authority—for issuing a writ of *certiorari* in vacation, and returnable before a Judge in Chambers. The writ is, I believe, one which must be returnable before the Court in *banc*, and the form of it, as given in



the book at which I have looked, is always so, and in criminal cases in England it formerly, and I apprehend still, issues only out of the Court of Queen's Bench, and is made returnable on a day in term, "before us at Westminster," or "before us where-soever, &c." I mention this to prevent this case being drawn into a precedent, so far as I am concerned. No objection is raised by the Counsel for the prosecution, and they have discussed the evidence as if regularly brought under consideration. I have no doubt writs of *certiorari* have been issued in a similar form before, in this Province, without objections; but they are not warranted by English Practice. The text of the present writ is also erroneous, but the mistake becomes of no consequence.

The first point taken was that it appeared that the prisoner was a native-born subject of Her Majesty, and, therefore, did not come under the Extradition Treaty, or the Statute passed to give it effect. Reference was also made on this subject to Statute 31, chapter 2, section 12. This objection was disposed of during the argument. The Statute 24 Vict. is large enough to embrace all persons, subjects, denizens or aliens, who have committed the crimes enumerated in the United States and who are found in this Province. It is sufficient to read the 12th section of the 31st, cap. 2, to see that it can have no application to a proceeding like the present.

It was further objected that the prisoner is proved to be an officer in the service of the Southern Confederacy—that there is an existing state of war between that Confederacy and the United States of America; that this state of War gives rise to, as between the belligerents themselves, certain rights acknowledged by the law of nations, and among them an immunity as regards all acts of hostility done either in the enemy's country or against the lives and property of the enemy's subjects and citizens. That the act charged as robbery was an act done in the prosecution of lawful hostilities, and though committed within the territory of the United States, was not a crime against the municipal law of that country. That Great Britain has recognized this state of war, and has, by a declaration of neutrality, admitted the existence in each of those rights which belong to belligerents. Hence it is argued that the judicial authorities of this country cannot treat such acts as the prisoner is charged with committing, under the circumstances as appearing, as crimes such as the Extradition Treaty was intended to apply to.

Such, concisely stated, I understand, are the grounds of the application for the prisoner's discharge. For the purpose of a decision, I assume, though I do not adjudge, that the evidence is properly before us, and that a decision must be founded upon a careful examination and consideration of the whole of it.

It is established that the alleged state of war exists. The Queen's Proclamation puts the question at rest, while it recognizes and declares the obligations arising from the neutrality to be observed by the Queen's subjects towards the belligerents.

Then the particular facts set forward appear to be that the prisoner is a British-born subject, who, by entering into the naval or military service of one of the belligerents has contracted engagements at variance with his proper duty as a British subject. It is asserted on his behalf, that, having been a prisoner of war in the United States, he made his escape; he is proved to have been in this Province in August, 1864; and in September of that year he was in the city of Detroit, within one of those States, in an apparently civil character. While there, and receiving the protection of the laws of that country, he owed, according to our law, a temporary allegiance, and might, by violating it, have been guilty of treason. He cannot, I think, be heard to say that he was not in that situation while living peaceably in Detroit for a greater or less time.

Dressed as a civilian, he comes on board an American steam-boat which was engaged in private trade. If he came armed, his weapons were concealed. At his request the vessel is stopped at a port within British territory, where three other persons came on board and joined him. They, too, like himself, appeared to be travellers, and were secretly armed, if they were armed. The steamboat touched, in her usual course, at another British port, where twenty or thirty more men in the dress of private citizens, and unarmed, came on board, bringing with them a chest or trunk, in which, as subsequently appeared, there were firearms and hatchets.

When the vessel had proceeded some distance within the United States territory, aided by the parties who came on board from the British territory, the prisoner seized the steam-boat, and then he and one of his associates, by force and terror, took from Ashley property belonging to him and his co-proprietors of the boat. These parties also took possession of another steamer, from which they removed every person, and took her with them a short distance and cast her adrift, having, it is said, scuttled her. They did not approach Johnson's Island, where the prisoners taken from the Confederate forces were confined, and of which the United States' steamer "Michigan" was said to be

within some miles, how near not appearing, but turned back towards Detroit and landed on the Canada shore, keeping the property they had taken from Ashley, and removing from the boat some of the property belonging to its owners. Some of the parties had declared their intention of capturing the "Michigan" and releasing the prisoners—but these are the acts done by them; while some of them made inquiries and spoke of what they would desire to do, in a manner indicating views of private pillage, rather than of warlike enterprise.

But, conceding that there is evidence that the prisoner was an officer in the Confederate service, and that he had the sanction of those who employed him to endeavour to capture the "Michigan," and to release the prisoners on Johnson's Island, the manifesto put forward as a shield to protect the prisoner from personal responsibility does not extend to what he has actually done—nay more, it absolutely prohibits a violation of neutral territory or of any rights of neutrals. The prisoner, however, according to the testimony, was a leader in an expedition embarked surreptitiously from a neutral territory his followers, with their weapons, found him in that territory, and proceeded thence to prosecute their enterprise, whatever it was, into the territory of the United States. Thus, assuming their intentions to have been what was professed, they deprived the expedition of the character of lawful hostility, and the very commencement and embarkation of their enterprise was a violation of neutral territory, and contrary to the letter and spirit of the manifesto produced.

This gives greater reason for carefully inquiring whether, looking at the whole case, the alleged belligerent enterprise was not put forward as a pretext to cloak very different designs.

Taken by themselves the acts of the prisoner himself clearly establish a *prima facie* case of robbery with violence—at least according to our law. The matters alleged to deprive the prisoner's acts of this criminal character are necessarily to be set up by way of defence to the charge, and involve the admission that the prisoner committed the acts, but denying their criminality. Assuming some act done within our jurisdiction, which, unexplained, would amount to robbery—if explanations were offered, and evidence to support them, were given at a preliminary investigation, the accused could not be discharged—the case must be submitted to a jury. This case cannot, from its very nature, be investigated before our tribunals, for the act was committed within the jurisdiction of the United States. Whether those facts necessary to rebut the *prima facie* case can be proved, can only be determined by the Courts of that country. We are bound to assume that they will try and decide it justly.

I do not, on the whole, think the prisoner is entitled to be discharged.

I should add, that, considering the nature of the questions to be determined, I requested the learned Chief-Justice of the Common Pleas, and my brothers Hagarty and John Wilson, who were all, at the moment, within reach, to sit with me and aid me with their opinion. They very kindly complied with my request, and are prepared to express their views. I am sustained by their concurrence in the conclusion at which I have arrived.

When he had concluded his Judgment his Lordship said he wished publicly to thank his learned brethren for the assistance they had given him.

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#### *Mr. Justice Richards' Judgment.*

I fail to see anything in the statute requiring that the evidence should be set out in warrant. It says:—"Upon such evidence as according to the laws of this Province would justify the apprehension and committal for trial of the person accused, if the crime of which he was so accused had been committed herein, it shall be lawful for such Judge or other officer to issue his warrant for the commitment of the person so charged to the proper gaol." The warrant in effect states that the Recorder had examined certain persons on oath touching the charge of robbery, and the evidence was such as according to the laws of this Province would justify the apprehension and committal for trial of the prisoner if the crime had been committed within this Province.

I see no reason why the evidence should be set out in a warrant of this kind more than in any other warrant. If the Court before whom the prisoner is brought should require the evidence in order to see if there is enough to justify his committal, they may direct it to be brought before them. If enough be stated in the warrant to show that the Judge had jurisdiction to inquire into the offence, that is all that is necessary. It is not contended that in any other respect the warrant is defective, except in not setting



out the evidence or showing an adjudication as to its effect. The recitals I think sufficiently state the effect of the evidence, and the decision of the Recorder thereon.

There is no doubt that under the Imperial Statute passed to carry out the provisions of the Treaty, very different proceedings are necessary to arrest a person who may have committed a crime in and fled from the United States. The proceedings required by that Act have been found to be so inconvenient that it became desirable to substitute other enactments in lieu of the Imperial Statute. The preamble of our Statute, 12 Vict., cap. 19, refers especially to the inconvenience of requiring the warrant to issue by the Governor to signify that a requisition had been made by the authority of the United States for the delivery of the offender, and to require all Justices, &c., to govern themselves accordingly, and to aid in apprehending and committing to gaol the person accused, for the purpose of being delivered up to justice, according to the provisions of the Treaty. After further declaring it expedient to make provision for carrying the Treaty into complete effect within this Province by the substitution of other enactments in lieu of the Imperial Act, the Legislature proceeded to pass the Statute of 1849, which was amended by the Act of 1861, and by both these enactments the initiatory proceedings to arrest a fugitive from justice from the United States may be taken without any warrant from the Governor.

The effective words of the last Act are upon complaint, made under oath, charging any person found within the limits of this Province with having committed within the jurisdiction of the United States of America any of the crimes enumerated in the Treaty, it shall be lawful for any Judge, &c., &c., Recorder of a city, &c., in this Province, to issue his warrant for the apprehension of the person so charged, that he be brought before such Judge or other officer, and upon the said person being brought before him under the said warrant, it shall be lawful for such Judge, &c., to examine upon oath any person or persons touching the truth of such charge, and upon such evidence as, according to the laws of this Province, would justify the apprehension and committal for trial of the person so accused, if the crime of which he shall be so accused had been committed herein, it shall be lawful for such Judge or other officer to issue his warrant for the commitment of the person so charged to the proper gaol, there to remain until surrendered, according to the stipulation of the Treaty, or until discharged according to law, and the Judge shall thereupon forthwith transmit to the Governor a copy of all the testimony taken before him, that a warrant may issue on the requisition of the United States for the surrender of such person, pursuant to the said Treaty.

By the Imperial Statute, on the requisition being made by the authority of the United States, the Secretary of State or person administering the Government in any Colony of Her Majesty by a warrant under his hand and seal, is to signify that such requisition has been so made, and to require all justices, &c., to govern themselves accordingly, and to aid in apprehending the person so accused. The Act then proceeds—"and thereupon it shall be lawful for the Justice, &c., to examine persons upon oath touching the truth of the charge, and upon such evidence as would justify the apprehension and commitment for trial of the accused, to issue a warrant for the apprehension of such person, and also to commit the person so accused to gaol, there to remain until delivered pursuant to such requisition as aforesaid."

Mr. Justice Richey, in the Chesapeake case, whose able judgment I have perused with great interest, decided on the effect of the English statute, which is very different from ours on this point. By the English Act the requisition is necessary to authorize the warrant of the Secretary of State or Governor, and that warrant is a condition precedent to the issue of a warrant by the Justice to apprehend or to commit the party accused, and when committed he is to remain in custody until delivered pursuant to the requisition.

Our statute, on the contrary, was intended expressly to render the warrant of the Governor unnecessary; and when the person is committed by the Judge in this Province he sends a copy of the evidence to the Governor that a warrant may issue upon the requisition of the United States' Government for the surrender of such person pursuant to the Treaty. It does not necessarily follow from the words of our Act that the requisition must precede the arrest or committal of the person accused.

If it is necessary to make the requisition by the authority of the Government of the United States before arresting a person who had committed a crime there, when the criminal had fled to this country, he might escape entirely before he could be arrested. The delay in obtaining the requisition might be so great that the criminal would have left the Province, and perhaps this continent, before he could be arrested, though the most clear and positive evidence could be procured on the spot to show that he had committed the offence. I think our Legislature intended to remedy this evil, and the

Act they passed has done so. The provision of the Treaty for the payment of the expense of the apprehension and delivery of the fugitive by the party making the requisition and recovering the fugitive, can be literally carried out by calling on the United States' Government to pay such expenses when they make the requisition and receive the fugitive. By making the requisition they assume the responsibility of paying the expenses of apprehending as well as delivering him.

I fail to see sufficient reason to hold that the arrest or warrant of commitment is bad for not showing a requisition from or on behalf of the United States' Government for the delivery of the prisoner, as a person charged with the offence. If the evidence shows he has committed the offence under our statute, he may well be committed until surrendered.

This brings me to another objection, that the prisoner was charged in the United States with the offence of piracy, and that he cannot now be committed for the crime of robbery. The charge made in this Province under which the prisoner was arrested was robbery. If the requisition on behalf of the United States' Government is for his extradition for the crime of piracy, I apprehend that he could not be surrendered under the warrant of commitment before us. He may have been guilty of the crime of piracy in the United States, but as this charge is one of robbery, the fact that he was charged with piracy there, cannot prevent his being surrendered for robbery, if such an offence is charged and proved against him here.

When the requisition is made, if his surrender is required for any other offence than the one charged against him here, and for which he is committed, as already remarked, it must be refused; and when surrendered, I apprehend that the United States' Government would, in good faith, be bound to try him for the offence upon which he was surrendered.

As to the merits, I think the Judges of the Superior Courts may consider if there is sufficient evidence to justify the committal of the prisoner. The cases referred to by Mr. Cameron are, in my judgment, authority for this point, and the words of the Statute of 1861 are more in accordance with this view even than those in the Act of 1849. By the Act of 1849 it is provided, "If on such hearing the evidence be deemed sufficient by him (the magistrate) to sustain the charge," he was to commit the offender under the Act of 1861. The words used are, "and upon such evidence as, according to the laws of this Province, would justify the apprehension and committal for trial of the person so accused," he is to issue his warrant.

I think the right of the Court to review the decision of the officer who issues the warrant to the extent I have stated, is sustained by general principles of law as well as by the authorities referred to, and it is one which it is not desirable should be taken away. The sending of any man out of the country under a Constitutional Government is a grave exercise of power, and ought not to be permitted unless the right to do so is established in the clearest manner. And when this right extends to delivering over any of the Queen's subjects to a foreign Power, though charged with a crime, as I am satisfied it does under our statute, it is not going an unreasonable length to assert that the subject has the right to have it placed beyond reasonable doubt that the evidence given to sustain the charge is sufficient in the judgment of the superior tribunals of the country to warrant such proceeding being legally taken against him.

As to the ground taken by the prisoner's counsel, that he, being a natural-born subject of Her Majesty, does not come within the provisions of the Treaty, and therefore cannot be surrendered, I think it would manifestly frustrate in many instances, the object of the Treaty, if such a doctrine was allowed to prevail. Suppose any one of the many British subjects domiciled in the United States was to commit the crime of forgery or arson, and then to fly to this country, ought we not to surrender him on proper evidence of his guilt. As we have no means of punishing him here for such an offence, it would seem like affording immunity to crime to say that he should not be surrendered. Then take the case of American citizens domiciled here (though not so numerous a body as British subjects resident in the United States), if they committed any of the crimes in this country mentioned in the Treaty, they might equally escape punishment if they could merely pass over what in many parts of the country is an imaginary line. When the intercourse between the two countries is so great as between Great Britain and the United States, countries having a common language and laws, and institutions in many respects similar, it may well be considered that the Executive Governments who negotiated the Treaty, and the Legislatures which have passed laws giving effect to it, intended what the Treaty and those laws affirm, namely, that all persons who commit certain crimes in one country and fly to the other shall be surrendered on a proper demand, and that any person whose extradition shall be demanded, who shall be found



within the limits of this Province), the territories of Her Majesty, shall be committed to gaol, &c., to be surrendered.

Whatever may be considered to have been the general rule in relation to a Government surrendering its own subjects to a foreign Government, I cannot say that I have any doubt, that under the Treaty and our own Statute, a British subject who is in other respects brought within the law, cannot legally demand that he ought not to be surrendered merely because he is a natural-born subject of Her Majesty.

As to receiving evidence on behalf of prisoners against whom charges are made as fugitive offenders, I do not see why the same course should not be pursued as in the ordinary examination of persons charged with offences committed in this Province. In Wise's Supplement to Burns' Justice, edition of 1852, it is recommended that such evidence be taken if offered. The observations of various judges are therein referred to as recommending it, and the opinion of the present Chief Justice of England, when at the Bar, in favour of that course, is given. One ground on which he based his recommendation was that the Imperial Act then in force, relative to duties of Justices of the Peace out of Sessions, similar to our Provincial Statute of Canada, cap. 102, sec. 30, directed the magistrate to take the statement on oath or affirmation of those who know the facts and circumstances of the case, and to put the same in writing. The words of our Statute 24 Vict., cap. 6, "to examine upon oath any person or persons touching the truth of such charge." This language would, in my judgment, authorize the examination of the prisoners' witnesses as much as that used in the section quoted from the Con. Stat., cap. 102.

It does not follow, however, that because the magistrate receives the evidence of the prisoner he must try the case and decide upon it from the weight of evidence, or in any such view. It may be that the evidence produced will satisfy all the parties that the accused is innocent, and it may not be considered as at all favourable to him. After receiving the evidence, the magistrate can then decide whether in his judgment the prisoner ought to be committed for trial or not.

I believe I have expressed my opinion on most if not all of the preliminary questions raised in the discussion of this matter, and the most important one for the prisoner yet remains to be disposed of, viz.: Is there such evidence touching the charge of robbery against the prisoner as would justify his apprehension and committal for trial if the crime of which he is accused had been committed here?

Taking the evidence adduced against the prisoner, there seems to have been sufficient to warrant his committal. Then, has he shown sufficient to relieve him from the charge?

Assuming, for the present, the position taken by the prisoner's counsel to be correct, that we, as belonging to a neutral nation, who have acknowledged that those who are contending against the recognized Government of the United States are belligerents, by such acknowledgment have placed them as to all hostile acts against the United States' Government in the same position as if they were a recognized Government; and, further assuming for the present, that an enterprise to capture the steamer "Michigan," and release the prisoners confined on Johnson's Island, undertaken by twenty-five or thirty men, would in the then status of affairs on Lake Michigan and its vicinity, be lawful and proper belligerent acts; does the evidence on behalf of the prisoner show that he was engaged in such an enterprise?

The facts urged on his behalf, as appearing from the evidence, I understand are these:—

"That there was a large number of prisoners, between 2,000 and 3,000, confined on Johnson's Island, in Lake Erie, at the time the "Philo Parsons" steamer was captured by the party with which the prisoner was said to have been connected.

"That the steamer "Michigan" was also stationed in the vicinity of that island.

"That two of the party who guarded one of the witnesses told him that they intended to capture the United States' steamer "Michigan," to release their friends on Johnson's Island.

"That the passengers of another small steamer called the "Island Queen," captured by the party, were taken off and put into the cabin of the "Philo Parsons," under guard of armed men. That some of these passengers were United States' soldiers. That subsequently the prisoner directed the man having the others in charge to march their prisoners down and put them into the hold three at a time, and they were marched down under guard and put into the hold.

"That when the boat was seized, some one remarked they were Confederate States' soldiers who were doing it.

"That the prosecutor at the time told some of the lady passengers of the boat that she was captured by rebels.

"That the pilot of the boat stated that Bell, who was in command of those who seized the boat, asked him if he was in charge of the "Philo Parsons," and then stated to him that he (Bell) was a Confederate officer; that he seized the boat and took him (the pilot) prisoner; that he would be obliged to submit to their doings; if not, he had arms (producing them) to compel him to do so. That the lady passengers of the captured steamers were put on shore, under a promise that they would not give the alarm for twenty-four hours, and that the male prisoners were sworn to secrecy.

"That no other passenger or person on board the steamer than the prosecutor was deprived of money or property, and that the captors acted on the view that, having got the boat as a lawful prize, they were entitled to all that belonged to the boat, money as well as everything else.

"That the men were officers and soldiers of, and acting under the orders of, the Confederate Government, and that the acts and conduct of the prisoner have been assumed by that Government.

"And that they hoisted the Confederate flag on the vessel after she had been captured. On the other side, it was contended that, having shown a taking of the money by force and violence, a *prima facie* case is made out.

"That, so far from the facts set up showing that their enterprise was to capture the steamer "Michigan," and release the prisoners on Johnson's Island, they did not go within ten or twelve miles either of the steamer or Johnson's Island. That there is no reason given, nothing whatever shown, that if they ever really intended to embark in such an enterprise as is suggested, why it was abandoned. That just before the prisoner or Bell took the money from the prosecutor the latter asked them to permit him to take some promissory notes which were his private property, amounting to about 2,000 dollars; that prisoner asked to see them, and after looking at them said he could not recollect them, and gave them back to the prosecutor; and Bell then said, 'we want your money,' both having revolvers drawn at that time. On being shown a small quantity of money in a drawer, prisoner then said, 'you have got more money; let's have it,' and prosecutor then took a roll of bills, containing about 90 dollars, out of his pocket and laid it on the desk, and Bell took part and the prisoner part; they took the money between them. Some of the party on guard over the pilot of the vessel asked him if a banker did not live on Grosse Isle, in the Detroit River. He replied that Ives lived there. They replied if it had not been so late they would go and rob him. That the clothes of the pilot of the vessel were taken by some of the party, and that he wished one of them who had taken a coat of his to return it, but he refused to do so. That when they arrived at Sandwich they took some of the furniture of the boat ashore. That, as to hoisting the Confederate flag, that was done after dark, and then only half-mast.

"That the evidence to show that the prisoner was an officer of the belligerent power, as he contended he was, was not sufficient, and that the instrument called a manifesto does not show that this prisoner was directed to engage in the alleged enterprise, but rather that it was entrusted to belligerent officers generally, and that prisoner was one of those officers, but not that he was personally directed to undertake or engage in the enterprise. That the assuming of the act is equally equivocal. That the acts and conduct of all the officers engaged in the expedition, and especially those of the prisoner, are assumed, but it is a matter of doubt if they were engaged in the expedition; they may have put that forward as a pretence, under cloak of which to commit robbery. That the instructions to the officers to undertake the expedition were to abstain from violating any of the laws of this country in relation to neutrality; that the prisoner, and those engaged with him, did not act on those instructions, but in disregard to our laws, and, under the pretence of being peaceable citizens, embarked on board a vessel of a, to us, neutral friendly Power, with concealed arms, and by force captured the vessel, and in violation of the laws of war took from the prosecutor, a private individual and a non-combatant, a considerable sum of money. That this act of robbery was not at all necessary for them in carrying out the alleged enterprise, if they really had intended to carry it out, and therefore, taking the justification set up by the prisoner himself, on the ground put by his counsel, it failed."

It was further contended on the part of the prosecutor that to attempt to carry on war or commit depredations which are to be dignified with the name of war, by the aid of only twenty-five or thirty men, hundreds of miles away from the scene of military operations in the interior of the enemy's country, remote from the sea, and to suppose that acts of plunder committed under such a pretence, would even be considered by neutrals as belligerent acts, was to extend the rule beyond reason, though such acts might have been undertaken under the direction of the belligerent authorities, or afterwards avowed by them.



If, on a similar matter occurring in this country, I was called upon to decide whether I would discharge the prisoner or commit him for trial, I should feel bound to commit him. I should say that, looking at all the facts as they are presented on either side, the conduct of those parties, and what they said and did during the time the vessel was in their possession, was of that equivocal character that it would, in the most favourable view suggested for the prisoner, be a matter for the consideration of a jury whether they were acting in good faith in carrying out a belligerent enterprise, or whether they were not cloaking an expedition for the purposes of plunder under pretence of a belligerent enterprise, thinking in that way more readily to escape detention.

I have no doubt that this is the view that would be taken of the case in England. In the case of *Tivnan and other*, in 10 L. T., N. S., 449, referred to in the argument, Chief Justice Cockburn, after stating that if the acts the prisoners were engaged in were not done with a piratical intent, but with an honest intention to assist one of the belligerents, they could not be treated as pirates, observed: "But then it is not because they assume the character of belligerents that they can thereby protect themselves from the consequences of acts really piratical." Now, here it is true that the prisoners at the time said they were acting on behalf of the Confederates, and that was equivalent to hoisting the Confederate flag. But then pirates sometimes hoist the flag of a nation to conceal their real character. No doubt, *prima facie*, the act of seizing a vessel, saying at the same time it is seized for the Confederates, may raise a presumption of such an intention; but then the circumstances must be looked at to see if the act was really done piratically, which would be for the jury, and I cannot say the Magistrate was not justified in committing the prisoner for trial. Crompton, in giving his judgment, said:—"I cannot say that the Magistrate, in his discretion, ought not to commit them on the ground that the act done was something like a belligerent act. For looking at the surreptitious way in which the prisoners went on board and took the vessel, there was evidence before the Magistrate that this was piracy." Upon this I quite concur with my Lord, because it is not for us to weigh the effect of the evidence, which is for the Magistrate, and all we can consider is whether there is enough to justify a committal, and I agree with my Lord that we cannot say that there is not. In conclusion, he said: "If, therefore, this was a belligerent act the prisoners are entitled to our judgment, but if not, and I think it was not, but piracy, *contra jus gentium*. In my view the case is not within the statute." Mr. Justice Blackburn said: "It strikes me there was an amount of evidence of its being piracy *jure gentium*, as if the case had been before a jury, the Judge would not have been justified in withdrawing it from them." As to the evidence, its effect would be for the jury, and though the Confederate States are not recognized as independent, they are recognized as a belligerent Power, and there can be no doubt that parties really acting on their behalf would be justified. But the case is one of piracy by the law of nations, in which case the men cannot be given up, because they can be tried here, or it is a case of an act of warfare, in which case they cannot be tried at all.

Entertaining the opinion I have expressed, it is my duty to declare that the learned Recorder was warranted in deciding to commit the prisoner for the purpose of being surrendered. As long as the Extradition Treaty between this country and the United States is in force, it ought to be honestly carried out, and in all cases where the evidence shows that an offence has been committed, though there may be conflicting evidence as to the facts, or different conclusions drawn from the facts, yet in those cases where we would commit for trial in similar cases in this country, we are equally bound to commit to be surrendered for trial under the Treaty and our statute passed to carry it out. We must assume that parties will have a fair trial after their surrender, or we ought not to deliver them up at all, or to have agreed to do so.

In conclusion, I will merely add that if it become necessary to go into the question how far enterprises such as it is now contended by the parties who seized the "*Philo Parsons*" they were engaged in could properly (under the circumstances attending that seizure in the inland waters, bordering on this country and the United States, wholly within the jurisdiction of the two countries) be considered a belligerent act, when undertaken by such an insignificant number of persons, and in the way it was conducted by them, I should require more time to consider and discuss it than I have as yet been able to give to the subject.

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*Mr. Justice Hagarty's Judgment.*

The evidence against the prisoner shows that a violent act of trespass has been committed on person and property, and a man has been robbed within the United

States jurisdiction, and the person charged with these acts is found here. The learned Recorder has found that the evidence sufficiently warrants his being arrested and committed to abide the action of the executive under the Treaty. We are asked now to say that there is no evidence legally warranting such action. On the merits the defence is that the alleged robbery was simply an exercise of a belligerent right in taking money from a prisoner of war—that it was a mere subordinate incident in a lawful act of hostility, viz., the capture of any enemy's vessel on an expedition for the further capture of a war-ship and the release of Confederate prisoners.

In considering this plea I will assume that the documents from Richmond given in evidence are genuine. It becomes most important to consider whether the prisoner when he took Ashley's money was in good faith proceeding on the warlike enterprise in question, or was he using it as a pretext to cover vulgar robbery. No act was done nor any attempt made on the United States' steamer or the island, nor any reason apparent on the evidence why the alleged design was abandoned. It is consistent with all that appears that the warlike enterprise was a mere pretext and plunder the actual object. On the other hand, it may be true that the prisoner was in good faith engaged in the alleged attempt. But would any judge or magistrate hesitate to say to a prisoner urging such a defence under such unprecedented circumstances, "Your defence may, perhaps, ultimately be established—I am not trying you, or deciding finally on your guilt or innocence—a *prima facie* crime is proved against you, and I must send you for trial; you can thus try to rebut the presumption arising from your acts?" If we decide that this is not enough to warrant his commitment for trial, we assume, I think, a most serious responsibility of holding that the facts in evidence do not disclose any offence—that all the prisoner's conduct was a legitimate act of open war—that the money in the pocket of an unarmed pursuer of a Lake Erie commercial steam-boat was a lawful prize of war to twenty or thirty men coming on board in the guise of ordinary passengers at American or Canadian ports, with hundreds of miles intervening between them and the nearest spot where their alleged country's flag was flying or a fellow-soldier in arms.

No writer of repute seems to distinguish with a firm hand the point where war ends and murder begins—between lawful prize and petty larceny. Many jurists tell how they think war should be waged in the light of improved civilization, but seem to shrink from the definition of settled principles governing its conduct. We are not referred to any case at all resembling that before us; it must, therefore be judged on its own peculiar facts.

I hesitate not to state my own opinion that such conduct as the prisoner's, under such circumstances, rebuts any clear conclusion that this was an act of war, and as such protected from the operation of the criminal law, so that the investigating judge should hold that a *prima facie* case was not established fully warranting the placing of the accused on his trial, and their bearing to his defence, if he can maintain it. I consider the avowal of the adoption of the alleged enterprise by the Confederate President as not affecting the duty of the Recorder in dealing with the case. The prisoner can have, I presume, the full benefit of that document on his trial. The alleged assumption of responsibility for his acts by his superiors, is rather a matter between them and the United States than between the latter and us. It might be a dangerous course for a neutral to accept as conclusive, from a belligerent power with whom it has no diplomatic relations, an avowal of acts so very equivocal as those of the prisoner, and so opposed to the ordinary ideas of modern warfare. It was in no way necessary, nor as far as the evidence indicates conclusive, to the success of the alleged enterprise, for the prisoner and his friend to take the pursuer's money. I do not feel pressed by the suggestion of counsel that the United States can equally demand the extradition as a murderer of a Confederate officer or soldier killing a Federal in battle. The mere statement of this case, and the fact that a state of war is admitted to exist, would answer the demand. Either belligerent flying from the pursuit of the other is safe within our border, and no argument can torture his acts done in ordinary warfare (as it is well understood by the common sense of every man, but not so easily defined by reference to international law) into those of a criminal, within the Ashburton Treaty.

Had this prisoner been arrested on the wharf in Detroit, as he stepped on the "Philo Parsons," and avowed and proved his character of a Confederate officer, he would have been in imminent danger of the martial rule applicable to a disguised enemy. Had he been joined secretly there by twenty or thirty persons starting over from the neutral shores of Canada, and then by a sudden assault destroyed some national property, or seized a vessel lying at the wharf and taken the money from the unarmed crew, I think they would, if captured in the act, have great difficulty in maintaining their right to be treated as prisoners of war, with no further responsibility.



In the Russian war I think we should hardly have allowed such a mild character to a like number of Russians coming over stealthily from the friendly shores of Detroit to burn, slay and plunder in Windsor.

All the prisoner's conduct, while within our jurisdiction during this affair, repels the idea of legitimate warfare. A British subject, without the Queen's license and against her Proclamation, in the service of one of the belligerents, acting in concert with persons leaving her ports on the false pretence of peaceful passengers, to wage war on a friendly Power—no act of his raises any presumption in favour of his being in good faith a soldier or sailor waging war with his enemy.

I think the only just course open to a Canadian Court is to decline accepting either the prisoner's statement or his alleged employer's avowal of his acts as conclusive of the proposition that his conduct was war and not robbery—it should accept the evidence offered as establishing a *prima facie* case of guilt sufficient to place the prisoner on his trial and call for his defence.

The whole burden of proving that the transferring of the money from Ashley's pocket to that of the prisoner and his friend does not bear the complexion that men of plain understanding must, under the circumstances, attribute to it, must be thrown upon the prisoner.

I think I am bound to construe a Treaty so made between my Sovereign and her ally in a liberal and just spirit, not labouring with eager astuteness to find flaws or doubtful meanings in its words, or in those of the legal forms required for carrying it into effect.

We are to regard its avowed object—the allowing of each country to bring to trial all prisoners charged with the expressed offences. Neither of the parties can properly have any desire to prevent such trial, or to shield a possible offender.

If the position of the case were reversed, and the prisoner had done the acts complained of in this country, and claimed to be a belligerent as against our Sovereign, I think any Canadian judge or magistrate would commit him for trial for robbery, leaving him to plead his belligerent position at his trial for what it was worth.

I have neither the desire nor the right to assume that he will not be fairly tried in the United States. The Treaty is based on the assumption that each country should be trusted with the trial of offences committed within its jurisdiction.

I think the prisoner should be remanded on the Recorder's warrant, which I think is not open to any valid objection. Had I differed from the result arrived at by the Recorder, I should then have to consider a doubt more than once expressed, whether any judge can review his decision.

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#### *Mr. Justice John Wilson's Judgment.*

The prisoner is charged with robbery, which is "the felonious taking of money or goods of any value from the person of another against his will, by violence or putting him in fear of purpose to steal the same." That he is guilty *prima facie* has not been denied; and being here, his counsel says he is a British subject, and cannot be sent beyond the kingdom for trial, and the Treaty is not broad enough to cover his case. Secondly, he says he is a belligerent, and claims his rights as such: first, because he holds a warrant as Acting Master in the Navy of the Confederate States of America; second, the seizure of the steam vessel the "Philo Parsons" was an act of war undertaken with the intent to liberate certain Confederate prisoners of war, confined on Johnson's Island, near Sandusky, on Lake Erie; third, that the act of robbery charged is at most an excess, and at all events merged in the higher belligerent act; fourth, he says that although he can show no order directing what he did, he has a manifesto signed by the President of the Confederate States, assuming the act by these States, and therefore he is not subject to committal for extradition under the Treaty and the provisions of the 24th Vict., cap. 6; and lastly he says the warrant of commitment contains no adjudication that the evidence sustains the charge.

The learned Recorder had equal jurisdiction with the judges of the superior courts of law to commit the prisoner for surrender under the Treaty, according to the provision of our statute to carry it into effect. Strictly speaking, the present application might have been disposed of by simply examining the warrant under which the prisoner has been committed, to see whether on its face it contained a sufficient charge of crime to justify the detention of the prisoner for extradition. But it is proper that a matter of public interest should be settled so as to remove doubt; the case has been heard at length,

and all the proceedings are now before us on a writ of *certiorari* issued at the instance of the prisoner.

It has been urged that the prisoner, being a British subject, cannot be sent from the province against his consent for trial in a foreign country, and that the language of the Treaty ought not to be so construed as to give this power. In Vattel, book ii, ch. 6, s. 76, it is said, that since the Sovereign ought not to suffer his subjects to molest the subjects of other States or to do them an injury, much less to give open audacious offence to foreign Powers, he ought to compel the transgressor to make reparation for the damage or injury, if possible, or to inflict on him an exemplary punishment, or, finally, according to the nature and circumstances of the case, to deliver him up to the offended State to be there brought to justice! This is pretty generally observed with respect to great crimes which are equally contrary to the laws and safety of all nations. Assassins, incendiaries, and robbers are seized everywhere at the desire of the Sovereign in whose territories the crime was committed, and are delivered up to his justice. But the words of the Treaty are "all persons" who shall be charged with any of the crimes mentioned in the Treaty shall be surrendered. There can be no doubt but that the words of the Treaty include British subjects, for it was made in accordance with the law of nations, which Vattel clearly shows. They ought to know that when acting contrary to their duty as loyal subjects, in violation of the Queen's Proclamation, and against the Foreign Enlistment Act, they are not to be favoured in setting up the commission of any foreign State, far less a State not recognized as a nation, to give them the rights of belligerents in their own country, to escape the consequences of crime committed in a foreign one. The evidence returned to us shows, *primâ facie*, that the prisoner committed a robbery in the State of Ohio, one of the United States. But it is answered, first, that the prisoner held a commission as Acting Master in the navy of the Confederate States. The holding of this or any other commission does not authorize him, *mero motu*, to wage warfare from a neutral territory on the unoffending and non-belligerent subjects of the country at war with the nation whose commission he holds. The evidence fails to prove such a commission. He says he seized the "Philo Parsons" as an act of war, with intent to liberate the prisoners on Johnson's Island, but for this act he produces no order of any superior officer, and the evidence does not show that he had any such order. He says this robbery was at worst an excess of a belligerent right, which was merged in the principal act. Now what was the principal act of war performed? Under the pretence of being a passenger, he went on board a freight and passenger steamboat at Detroit. As a favour, he requested the master to touch at Sandwich, a British port, to take in three persons as passengers, which was done. The boat proceeded on its regular voyage to Amherstburg, a town in this province, near the mouth of the Detroit River, about fourteen miles below Sandwich. Here about twenty men, dressed in the ordinary attire of the farming people of the United States, with one rough trunk, tied round with a cord, and no other baggage, supposed to be citizens of the United States returning to their homes after an absence to escape the draft for the recruiting of the army of the United States, came on board the steamer. The prisoner and his three fellow-passengers affect no knowledge of the last twenty. The course of the vessel to Sandusky, from the mouth of the river, is south-east. She had to pass a number of islands. The northerly are British, the southerly American. The boundary line of this province was north of the Bass Islands, and thence between Pele Island and Sandusky Island. Johnson's Island is said to be fourteen miles from the Middle Bass Island, and two miles from Sandusky. Nothing occurred to excite suspicion or cause alarm until the boat was clearly within the territory of the United States. Suddenly the prisoner presented a revolver at Ashley, and drove him, at peril of his life, into the ladies' cabin. Bell, one of his confederates, overcame the mate in a similar manner. The other twenty, more or less, rushed to their trunk, armed themselves with revolvers and hatchets which it contained, acted under the orders of Bell and the prisoner, and the boat became at once under their control. So far, neither of the leaders declares his reason for this proceeding. It was rumoured that their object was to liberate the prisoners at Johnson's Island. After some hours the boat landed at the Middle Bass Island, having taken possession of a small steamboat, the "Island Queen." At this island, just before Ashley was put on shore, Bell and the prisoner, with revolvers to enforce the command, demanded his money. After getting what was in his drawer, the prisoner insists he has more, and Ashley took from his waistcoat-pocket a roll of bills, about 90 dollars he supposes, which the prisoner and Bell share between them. In the meantime, the mate with others were in the hold of the vessel, and she sailed. Before day the mate is called upon to sail the vessel for the Detroit River, which was reached about daylight. Inquiry was made as to whether a banker did not live on Grosse Isle, and it was suggested that but for the lateness of the



hour they would have robbed him. The course of the vessel was continued up the river in the British channel to Sandwich, where the boat was stopped, some goods taken from it, and then abandoned. The actors in these proceedings at once dispersed. These proceedings, so mean in their inception and so ignoble in their development and termination, we are asked to consider as acts of war, and to accord to the prisoner belligerent rights. What is there in all this which constitutes the act of war? If the object were to release the prisoners, from all that appears they never were nearer than fourteen miles to Johnson's Island. Was the seizure of this unarmed boat *per se* an act of war?—for it has been argued that the robbery was merged in the higher act. The seizure of the boat, for whatever purpose, was one thing; the robbery of Ashley quite another; and in no way that we see, in furtherance of the design now insisted upon, necessary for its accomplishment. But is not the *bond fide* of the enterprise matter of defence which a jury ought to try? Such a trial can only be had where the offence was committed, and we cannot doubt but that justice will be fairly administered.

Then we are told that although the prisoner has no orders to show authorizing what he did, he has the manifesto of the President of the Confederate States avowing the act and assuming it, and therefore he is not subject to this charge at all. We accord to that Confederacy the rights of a belligerent, as the United States has done from the day it treated the soldiers of the revolted States as prisoners of war; but there is an obvious distinction between an order to do a belligerent act, and the recognition and avowal of such an act after it has been done. The one is an act of war, the other an act of an established Government. The one is consistent with what Great Britain acknowledges, the other is not. For us judicially to give effect to the avowal and adoption of this act would be to recognize the existence of the nationality of the Confederate States, which at present our Government refuses to acknowledge.

Giving for the moment this manifesto its full force, it distinctly disclaims all breaches of neutrality; but it is clear that this expedition took its departure, and shipped its arms from our port. But does it assume the responsibility of this seizure, and all that was done upon it throughout? If not, it is neither justification nor excuse. I see no authority for the doing of the act; and as an assumption of what was done, therefore, the whole justification fails. Lastly, it is objected that the warrant does not charge an offence except by way of recital, and contains no adjudication upon the offence charged.

I think the warrant recites properly the offence charged; and the adjudication is, "that the prisoner is, and stands charged with the offence," which is all that is required.

The attitude of the United States towards us, is no concern of ours. Sitting here, whatever they do, while peace exists, and this Treaty is in force, we are bound to give it effect. We can look with no favour on treachery and fraud; we cannot countenance warfare to be carried on except on the principles of modern civilization. We must not permit, with the sanction of law, our neutral rights to be invaded, our territory made the base of warlike operations, or the refuge from flagrant crimes. Peace is the rule, war the exception, of modern times; equivocal acts must be taken most strongly against those who, under pretence of war, commit them. For these reasons I think the prisoner must be remanded on the warrant of the learned Recorder.

### No. 3.

*Mr. Hammond to Mr. Dalglish, M.P.*

Sir,

*Foreign Office, February 25, 1865.*

I AM directed by Earl Russell to acknowledge the receipt of your letter of yesterday's date relative to the case of Mr. Bennett Burley, who has been given over to the United States' authorities under the Extradition Treaty, on a charge of robbery, in which you convey the request of Mr. Burley, senior, that Her Majesty's Government will so far exert their good offices on his son's behalf as to endeavour to secure that he shall not be tried on any other charge than that on which the claim was made for his extradition.

I am to state to you in reply that, after consultation with the proper Law Advisers of the Crown, Lord Russell has by this evening's mail addressed to Her Majesty's Chargé d'Affaires at Washington such instructions as the case admits of.

I am, &c.

(Signed) E. HAMMOND.

*Earl Russell to Mr. Burnley.*

Sir,

*Foreign Office, February 25, 1865.*

WITH reference to the case of Mr. Bennett Burley, who has been given over by the Canadian authorities to the United States' Government under the Extradition Treaty, on a charge of robbery, I transmit to you herewith a copy of a letter from Mr. Dalglish, M.P.,\* forwarding, at the request of Mr. Burley's father, a statement relative to his son, from which it would seem that fears are entertained that Bennett Burley will not be tried before the United States' Courts on a charge of theft, but on a charge of piracy, and Mr. Burley, senior, as a British subject, consequently asks for the good offices of Her Majesty's Government on behalf of his son, in so far as that he may not be tried on any other charge than that on which the claim was made for his extradition.

I have to state to you that, having considered this application in communication with the proper Law Advisers of the Crown, Her Majesty's Government are of opinion that if the United States' Government, having obtained the extradition of Burley on the charge of robbery, do not put him on his trial upon this charge, but upon another, viz., piracy (which if it had been made before the Canadian authorities they might have held not sufficiently established to warrant his extradition), this would be a breach of good faith against which Her Majesty's Government might justly remonstrate. If, however, the United States' Government does *bond fide* put Burley on his trial for the offence in respect of which he was given up, it seems to Her Majesty's Government that it would be difficult to question the right of that Government to put him upon his trial for piracy also, or any other offence which he may be accused of having committed within their territory, whether such offence was or was not a ground of extradition, or even within the Treaty.

Accordingly, Her Majesty's Government can only so far comply with the application of Mr. Burley, senior, as to instruct you to protest against any attempt to change the ground of accusation upon which Burley was surrendered in pursuance of the Treaty.

I am, &amp;c.

(Signed) RUSSELL.

## No. 5.

*Mr. Burley to Earl Russell.—(Received March 25.)*

My Lord,

*Glasgow, March 24, 1865.*

YOU lately favoured me by acceding to the request I made through Robert Dalglish, M.P., to use the influence of your office in behalf of my son Bennet G. Burley, lately extradited by the Candian authorities, on a charge of robbery in connection with the capture of the steamer "Philo Parsons" on Lake Erie.

Since then I have had several letters and newspapers from Canada, and the information derived from them, leaves it very uncertain whether he may not be tried on a higher charge in the United States than he was in Canada.

In Canada various charges brought against him, including that of piracy were departed from, by the prosecuting counsel and the District Attorney for the United States, and this charge of robbing Ashley (clerk and part owner of the steamer) was alone relied on for extradition.

From my own knowledge, I am certain that he is innocent of this charge, were it from nothing else than Ashley's description of his person.

Ashley's evidence was loose and often contradictory, and on important points directly opposed to that of Nicholls, the mate of the steamer.

None saw the robbery, but Ashley and those who took the money; the charge rests sole on his testimony, and could have been disproven had witnesses been free to give evidence in Canada.

The late execution of Captain Bealle, one of the parties engaged in the same enterprise, on Lake Erie, makes me more solicitous, that Her Majesty's Government



may interpose to see that my son, be not tried for a higher crime than that for which he was surrendered.

I suppose that good faith demands this, but late accounts are contradictory, and in the event of a departure, from what must be considered a just course, it may be a case of life and death, for which the British Empire is so far responsible.

Justice Richards in giving judgment on the case says, "We must presume that parties will have a fair trial after their surrender, or we ought not to deliver them up at all, or to have agreed to do so."

The trial was to take place on the 21st instant, and in case it may have been on a higher charge and adverse, I have ventured to again draw your attention to it, seeing that piracy is mentioned in Article X of the Extradition Treaty.

But I observe that American statesmen, at the passing of the Treaty, opposed it as likely to be used as an instrument against "political offenders and participators in justifiable revolution;" and President Taylor in his Message said: "The object has been to exclude all political offences or criminal charges arising from wars or intestine commotions; treason or misprision of treason, libels, desertions from military service, and other offences of similar character are excluded."

It never can be looked on as justice that a man on the oath of one person charging him with a minor offence, and surrendered on such, can be arraigned on a higher, and perhaps even the minor totally false.

I am living in the hope that such cannot be, but when I learn what is taking place around, my apprehensions get uppermost, and I could not refrain from obtruding on your attention at this time. My personal interest and feelings will, I hope, furnish some excuse for me.

I have, &c.  
(Signed) ROBERT BURLEY.

No. 6.

*Mr. Burnley to Earl Russell.—(Received April 6.)*

My Lord,

Washington, March 24, 1865.

IN accordance with the instructions contained in your Lordship's despatch of the 25th ultimo, I addressed a note to Mr. Seward, copy of which I have the honour to inclose, protesting against any attempt to change the ground of accusation upon which Burley was surrendered in pursuance of the Treaty by the Canadian authorities.

I have now the honour to inclose Mr. Seward's reply, informing me that it is at present the purpose of the United States' Government to bring him to trial for crimes committed against the municipal law of the States of Ohio and Michigan, namely, robbery and assault with intent to commit murder.

I have, &c.  
(Signed) J. HUME BURNLEY.

Inclosure 1 in No. 6.

*Mr. Burnley to Mr. Seward.*

Sir,

Washington, March 15, 1865.

WITH reference to the case of B. G. Burley, who has been given over by the Canadian authorities to the United States' Government under the Extradition Treaty on a charge of robbery, Her Majesty's Government have recently had under their consideration, in communication with the proper Law Advisers of the Crown, a statement forwarded to them by a Member of the House of Commons at the request of Burley's father relative to his son, from which it would seem that fears are entertained that B. Burley will not be tried before the United States' Courts on the charge of theft, but on a charge of piracy; and Mr. Burley, senior, asks for the good offices of Her Majesty's Government on behalf of his son, in so far as that he may not be tried on any other charge than that on which the claim was made for his extradition.

Her Majesty's Government having considered this application, are of opinion that if the United States' Government, having obtained the extradition on the charge of robbery, do not put him on his trial upon this charge, but upon another, viz., piracy, which, if it had been made before the Canadian authorities, they might have held not sufficiently established to warrant his extradition, this would be a breach of good faith, against which Her Majesty's Government might justly remonstrate.

Her Majesty's Government are, therefore, willing, should the grounds upon which Burley is to be tried take the above turn, to comply so far with the application of Mr. Burley, sen., as to instruct me to protest against any attempt to change the ground of accusation upon which Burley was surrendered in pursuance of the Treaty.

I have, &c.

(Signed) J. H. BURNLEY.

Inclosure 2 in No. 6.

*Mr. Seward to Mr. Burnley.*

Sir,

*Department of State, Washington, March 20, 1865.*

I RECUR to your note of the 15th of March, which relates to B. G. Burley. The Honourable the Attorney-General informs me that it is his purpose to bring the offender to trial in the Courts of the States of Ohio and Michigan for the crimes committed by him against the municipal laws of those States, namely, robbery and assault, with intent to commit murder. He was delivered up by the Canadian authorities upon a requisition which was based upon charges of those crimes, and also upon a charge of piracy, which is triable not by State Courts, but by the Courts of the United States. I am not prepared to admit the principle claimed in the Protest of Her Majesty's Government, that the offender could not legally be tried for the crime of piracy under the circumstances of the case. Nevertheless, the question raised upon it has become an abstraction, as it is at present the purpose of the Government to bring him to trial for the crimes against municipal law only.

I have, &c.

(Signed) W. H. SEWARD.

No. 7.

*Earl Russell to Mr. Burnley.*

Sir,

*Foreign Office, March 25, 1865.*

WITH reference to my despatch of the 25th ultimo, I inclose a copy of a letter from Mr. Burley respecting his son, and I have to instruct you to continue to use your best exertions, so far as the case admits of it, on behalf of Mr. Bennett Burnley.

I am, &c.

(Signed) RUSSELL.

No. 8.

*Mr. Hammond to Mr. Burley.*

Sir,

*Foreign Office, March 25, 1865.*

I AM directed by Earl Russell to acknowledge the receipt of your letter of yesterday's date, and to state to you that a copy of it shall be transmitted to Her Majesty's Minister at Washington by this evening's mail, with instructions to continue to use his best exertions, so far as the case admits of it, on your son's behalf.

I am, however, to add, that if your son is *bond fide* tried for the robbery for which he



was given up, the right of the United States' Government to try him for piracy also could not be resisted.

I am, &c.  
(Signed) E. HAMMOND.

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No. 9.

*Mr. Hammond to Mr. Elliot.*

Sir, *Foreign Office, April 11, 1865.*  
I AM directed by Earl Russell to transmit to you, to be laid before Mr. Secretary Cardwell, a copy of a despatch from Her Majesty's Chargé d'Affaires at Washington, inclosing copies of a note which, under instructions from Her Majesty's Government, he had addressed to Mr. Seward respecting the case of Mr. Bennett Burley, and of the answer which Mr. Seward had returned thereto; and I am to request that Lord Russell may be favoured with any observations which Mr. Cardwell may have to offer upon these papers previously to their being submitted to the Law Officers of the Crown.

I am, &c.  
(Signed) E. HAMMOND.

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No. 10.

*Mr. Elliot to Mr. Hammond.—(Received April 20.)*

Sir, *Downing Street, April 19, 1865.*  
WITH reference to your letter of the 11th instant, respecting the case of Mr. Bennett Burley, I am directed by Mr. Secretary Cardwell to acquaint you, for the information of Earl Russell, that the only observation which Mr. Cardwell has to make on the correspondence enclosed in your letter is, that in the warrant issued by the Governor of Canada there is no appearance of any assault with intent to commit murder. There is a charge that Burley assaulted Ashley, and "put him in bodily fear and danger of his life," and there is a charge of robbery, on which last charge the judgment delivered on the writ of habeas corpus mainly turned.

I am, &c.  
(Signed) T. FREDK. ELLIOT.

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No. 11.

*Mr. Hammond to Mr. Burley.*

Sir, *Foreign Office, May 9, 1865.*  
WITH reference to my letter of the 25th of March, I am directed by Earl Russell to inform you that it would appear from a despatch which has been received from Her Majesty's Chargé d'Affaires at Washington that the Government of the United States do not intend to bring your son to trial on a charge of piracy, but for offences against the municipal laws of the States of Ohio and Michigan.

I am, &c.  
(Signed) E. HAMMOND.

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No. 12.

*Earl Russell to Sir F. Bruce.*

Sir, *Foreign Office, May 9, 1865.*  
HER Majesty's Government have considered, in communication with the Law Advisers of the Crown, Mr. Burnley's despatch of the 24th of March, inclosing copies  
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of correspondence which had passed between him and Mr. Seward respecting the case of Bennett Burley, and I have now to inform you that Her Majesty's Government adhere to the opinion, which I expressed in my despatch of the 25th of February, that it would have been a breach of good faith to have put Burley upon his trial for the charge of piracy, which was not the ground of his extradition under the Treaty, unless he were, at all events, *bond fide* tried for robbery, for which offence he was given up. The same observation is equally applicable to the charge of assault with intent to commit murder, with which Her Majesty's Government do not understand Burley to have been charged before the Canadian authorities.

I have, however, at the same time to acquaint you that Her Majesty's Government also adhere to the opinion as to their limited power of interference in this case, as expressed in my above-mentioned despatch, if Burley be really tried upon the charge for which he was given up, and also upon other charges. But it appears from Mr. Seward's letter to Mr. Burnley of the 20th of March, that Burley will not be tried for piracy, as had been apprehended.

I am, &c.  
(Signed) RUSSELL.

No. 13.

*Mr. Burley to Earl Russell.—(Received May 20.)*

My Lord,

Glasgow, May 19, 1865.

I DULY received the letter of the 9th instant, informing me that, from a despatch received from Her Majesty's Chargé d'Affaires at Washington, it would appear that the United States' Government did not intend to try my son for piracy, but for offences against the municipal laws of the States of Ohio and Michigan.

I have learned that his trial has been several times postponed, and now I learn that it is to take place on the 6th of June proximo. He will thus have had an imprisonment of seven or eight months in Canada and the United States together before being brought to trial, even if there be not another postponement.

I know that he committed no act of robbery, as alleged; nothing, in fact, but the admitted "act of war," consisting of his being one of the party who captured the steamer on Lake Erie, for the purpose of using her to release the "Confederate prisoners" on Johnson's Island. Even the official correspondence (both British and American) clearly shows the act to have been a belligerent act. All other cases of similar character have been treated by British authorities as such; in fact, his is the solitary case, so far I have yet learned, of a belligerent being surrendered by a neutral Power.

Considering all the circumstances of his case, I do feel called upon to again urge on your Lordship's Government the necessity of still further directing the attention of the Government of the United States to the illegality and injustice of his surrender and detention, so opposed to the declarations of her President and statesmen at the time of passing the Extradition Treaty, and to the Treaty itself, and to the late decision in departing from the demand of the extradition of the St. Alban's raiders.

Bail for my son's appearance has been asked, but this in the United States will be next to, if not impossible, to get; and should his trial be again postponed, and he still lingering in gaol, would it be too much to ask that the Government officials of Canada (who were principally instrumental in compassing his extradition) should be called on to provide such bail? To them belongs the duty of repairing (so far as it can be done) the grave error of his surrender, for as such it must now, at least, be looked on,—an obvious departure from all recognized international law.

My son is but one individual of the many, and may count for little in the actions and intercourse of nations, but here at home with us his case is everything.

Hoping that I have not too much obtruded on your Lordship's attention, I am,

(Signed) ROBERT BURLEY.



*Mr. Elliot to Mr. Hammond.—(Received May 25.)*

Sir,

*Downing Street, May 23, 1865.*

WITH reference to my letter of the 19th of April, I am directed by Mr. Secretary Cardwell to transmit to you, for the information of Earl Russell, a copy of a confidential despatch from the Governor of Canada, inclosing copies of the requisitions from the United States' Government for the extradition of Bennett S. Burley.

These requisitions were supplied by the Governor in consequence of Mr. Cardwell having observed that they had not been transmitted to this Department with the other papers on the subject.

I am, &c.

(Signed) T. FREDK. ELLIOT.

Inclosure 1 in No. 14.

*Viscount Monck to Mr. Secretary Cardwell.*

Sir,

*Quebec, May 3, 1865.*

I HAVE the honour to acknowledge the receipt of your confidential despatch of April 15th, and according to the desire expressed in it, I now transmit to you copies of two requisitions from the Secretary of State of the United States for the extradition of Bennett G. Burley.

In the first of these requisitions, dated October 13, Burley, with others, is charged with the crimes of robbery and of assault with intent to commit murder; and in the second, dated November 29th, he is charged with the crimes of piracy, robbery, and assault, with intent to commit murder.

I beg, however, to call your attention to the circumstance that I issued my warrant for Burley's extradition as being charged with the crime of robbery only. Of this I had the honour to inform you in my despatch of February 3rd, and I made a similar communication to Her Majesty's Chargé d'Affaires at Washington, in the note in which I apprised him that Burley would be surrendered to the authorities of the United States.

I have, &c.

(Signed) MONCK.

Inclosure 2 in No. 14.

*Mr. Seward to Mr. Burnley.*

Sir,

*Department of State, Washington, October 13, 1864.*

INFORMATION having been received at this Department that a man passing by the name of Belt, together with a number of associates, some of whom have been known under the names of Holt, Bristowe, Robert Drake, Burley, and Thomas respectively, and others of whom the names have not been ascertained, charged with the crime of robbery and of assault with intent to commit murder within the jurisdiction of the United States, are now fugitives from the justice of the United States in Canada and Nova Scotia, I have the honour to request through you, Sir, that Her Britannic Majesty's Government will, upon the arrest and commitment of the said fugitives, or any of them, be pleased to issue the necessary warrant for the delivery to Joseph Dinnick and James Henry, or to any other person or persons duly authorised by the authorities of the State of Ohio to receive the said fugitives in order to bring them back to the United States for trial.

I have, &c.

(Signed) W. H. SEWARD.

Inclosure 3 in No. 14.

*Mr. Seward to Lord Lyons.*

My Lord,

*Department of State, Washington, November 29, 1864.*

CREDIBLE information having been received at this Department that Bennet G. Burley, charged with the crimes of piracy, robbery, and assault with intent to commit murder, on board the United States' merchant steamer "Philo Parsons," upon Lake Erie, and within the jurisdiction of the United States, is a fugitive from the justice of the United States in Canada, and that he is now held in custody at Toronto in that province, awaiting the requisition of this Government for his extradition, in virtue of the provisions of the Xth Article of the Treaty of Washington, I have now the honour to request, through your Lordship, that Her Majesty's Government may be pleased to issue the necessary warrant for the delivery of the aforementioned Bennet G. Burley to Joseph Dimmick and James Henry, or to any other person or persons who may be duly authorized by the Marshal of the United States for the Eastern District of Michigan to receive the said fugitive, and bring him back to the United States for trial.

I have, &amp;c.

(Signed) W. H. SEWARD.

No. 15.

*Mr. Hammond to Mr. Burley.*

Sir,

*Foreign Office, May 29, 1865.*

I AM directed by Earl Russell to acknowledge the receipt of your further letter of the 19th instant respecting the case of your son, and I am to inform you that that letter is under his Lordship's consideration.

I am, &amp;c.

(Signed) E. HAMMOND.

No. 16.

*Mr. Burley to Earl Russell.—(Received June 3.)*

My Lord,

*Glasgow, June 2, 1865.*

PREVIOUSLY to being favoured with the letter of the 29th ultimo from the Foreign Office, I had a letter from a friend in Canada inclosing one he had received from my son, written from the Detroit House of Correction, and dated 30th April.

I take the liberty of sending your Lordship an extract from my son's letter, as tending to explain his present situation and treatment.

He writes:—

"Last Thursday afternoon my irons were removed from my feet, and permission granted me to promenade along the gallery on which my cell is. Since then they have been very kind, permitting me to take a few hours' exercise every day in the same way. Already I am feeling considerably bettered by this privilege in many ways. You can have no idea how much I enjoy my daily walk, it makes me almost dream. I have acquired renewed life and hope. I have just returned from service in the prison chapel. I assure you it seemed like old times going to Church once more, and hearing the dear Sabbath bells ringing the same glad welcome as of old.

\* \* \* \* \*

"I can now understand, as I previously surmised, the spirit that prompted that offer of pardon, through such a worthy messenger as proposed it; though, of course, I cannot but feel delighted at being made the recipient of such intended kindness, and flattered at the projected honour that was to have been done me.

"How often may we, with equal truth, exclaim with the sage, 'God preserve us from our friends!'"

The above is the latest information I have, and the time appointed for his trial—6th June—approaches.

I am, &amp;c.

(Signed) ROBERT BURLEY.



No. 17.

*Earl Russell to Sir F. Bruce.*

Sir,

*Foreign Office, June 8, 1865.*

I INCLOSE a copy of a letter from Mr. Burley, senior,\* respecting the case of Bennet Burley, and I have to state to you that, having consulted the Law Officers of the Crown, Her Majesty's Government are of opinion that if the trial of Bennett Burley, which was to take place on the 6th instant, should be again postponed, you should use your good offices with the United States' Government in order to procure his immediate trial, and should call the attention of that Government to the length of the imprisonment which he has already undergone.

It is scarcely necessary to say, with reference to Mr. Burley's question on the subject of bail, that neither the Canadian Government, nor any member or members of it, can be required to give bail, as suggested by him.

I am, &c.  
(Signed) RUSSELL.

No. 18

*Mr. Hammond to Mr. Burley.*

Sir,

*Foreign Office, June 8, 1865.*

I AM directed by Earl Russell to acknowledge the receipt of your letters of the 19th ultimo and 2nd instant, and I am to state to you that Lord Russell has instructed Sir F. Bruce if your son's trial should be again postponed to use his good offices with the United States' Government in order to procure his immediate trial, but that neither the Canadian Government, nor any member or members of it, could be required to give bail for your son, as suggested by you.

I am, &c.  
(Signed) E. HAMMOND.

No. 19.

*Sir F. Bruce to Earl Russell.—(Received June 25.)*

My Lord,

*Washington, June 13, 1865.*

WITH reference to your Lordship's despatch of the 9th of May, and to previous correspondence relative to Mr. B. G. Burley, I have the honour to inform your Lordship that Mr. Sylvester Larned, having written to me, as counsel for the accused, to know whether I had received any instructions from Her Majesty's Government with regard to Mr. Burley's case, I stated to him, in reply, that in the present stage of the proceedings I could take no steps in the matter, and I requested to be informed of the specific charges on which Mr. Burley is to be tried.

I have the honour to inclose a copy of Mr. Larned's reply, in which it is stated that Mr. Burley has just been indicted in the County of Ottawa, State of Ohio, and that he is not to be tried in a District Court for robbery on the high seas or for piracy.

I do not consider that it would be advisable to make any application in Mr. Burley's favour until after his trial is over.

I have, &c.  
(Signed) FREDERICK W. A. BRUCE.

Inclosure in No. 19.

*Mr. Larned to Sir F. Bruce.*

Sir,

*Detroit, June 10, 1865.*

I HAVE the honour to acknowledge your letter requesting information as to specific charges on which Mr. B. G. Burley is to be tried. The facts are the following:—

He has just been indicted in the County of Ottawa, of Ohio, for robbery.

He was indicted in the United States' District Court for Eastern District of Michigan for robbery on the high seas and for piracy.

These indictments the United States' District Attorney considers are bad, and he will never be tried on them; for the reasons that these offences are not predicable upon any acts committed on inland waters. The Government are disposed to extend lenity towards him. He has now been in close confinement for eight months, and were it not for the present temper of times growing out of the assassination of the late President he would be acquitted before the Ohio Tribunal, because he was an officer of the late Confederate Government, acting under their orders and compelled to obey such orders, and the expedition was purely a military expedition designed to liberate the prisoners held in custody at Johnson's Island, in Lake Erie. To carry out this expedition Burley and his associates, in carrying out the plan, seized a steamer and took possession of certain moneys belonging to the boat, for this last-mentioned act Burley is to be tried (if tried at all). But the general character, scope, and tending of the enterprize, is the rule by which to judge of the character of the individual acts committed. If the object (as admitted) was the release of the prisoners then there was no *animus furandi* in their seizing the property of the boat to carry out their enterprize, I have stated these facts to induce you in these days of merciful amenities, in an unofficial way, to ask the Secretary of State a pardon for Burley, which he would grant, or to admit him to bail.

I have, &c.  
(Signed) SYLVESTER LARNED.

No. 20.

*Mr. Burley to Earl Russell.—(Received July 17.)*

My Lord,

*Glasgow, June 16, 1865.*

I DULY received the letter of the 8th current, from the Foreign Office, informing me that your Lordship had sent instructions to Sir Frederick Bruce, to use his good offices with the United States' Government to bring my son to immediate trial; and that neither the Canadian Government, nor any member, or members of it, could be required to provide bail for him if his trial should be again postponed.

It appears to me questionable, considering the present state of affairs in the United States, and the temper of her people, whether urging an immediate trial is the most judicious course to pursue.

I am informed, by letter, and I also see from American papers, that the trial is again postponed, and until September; and I cannot help thinking but that the authorities of Canada are entitled to be required to furnish bail (seeing that bail would be accepted).

I take it for granted, as acceded, that my son was illegally surrendered by the authorities of Canada, contrary to law and precedent, and even to subsequent decisions of the Tribunals of that Province, referring to acts of a like or more aggravated kind; that in fact he has been delivered to his enemies by the Administrators of British law in Canada, in violation of British law itself; seeing this justice and common sense will look to them for reparation for their untoward act; and it ought to be both their desire and duty to make such reparation, though it would be even less than justice when done.

Pardon has been offered him; but it must have been on unworthy conditions, conditions such as no honourable or conscientious man could accept, unless driven to great extremity) if even then.

I have, in my several communications to your Lordship, endeavoured to represent my son's case in its true light, thinking that this Government might find some means to release him from what I conceive to be an unjust surrender and imprisonment.

My feelings and my duty urged me to this course.

Now, if no more favourable accounts reach me soon, my next step must be to cross the Atlantic in person.

I am, &c.  
(Signed) ROBERT BURLEY.



## No. 21.

*Earl Russell to Sir F. Bruce.*

Sir,

*Foreign Office, June 22, 1865.*

WITH reference to my despatch of the 8th instant, I transmit to you herewith, a copy of a further letter from Mr. R. Burley, respecting his son's imprisonment;\* and I have to instruct you to report to me how this case now stands.

I am, &c.  
(Signed) RUSSELL.

---

## No. 22.

*Mr. Hammond to Mr. Burley.*

Sir,

*Foreign Office, June 22, 1865.*

I AM directed by Earl Russell to acknowledge the receipt of your letter of the 16th instant, respecting your son's imprisonment; and I am desired to state to you that a copy of your letter will be forwarded to Her Majesty's Minister at Washington.

I am, &c.  
(Signed) E. HAMMOND.

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## No. 23.

*Mr. Hammond to Mr. Burley.*

Sir,

*Foreign Office, June 28, 1865.*

WITH reference to my letter of the 22nd instant, I am directed by Earl Russell to inform you that it appears, from a despatch which has been received from Sir F. Bruce, that your son is to be tried in the Court of the County of Ottawa, of Ohio, on the charge of robbery, and not for robbery on the high seas, and piracy, as previously proposed.

Sir F. Bruce adds, that he does not consider that it would be advisable for him to make any application to the United States' Government on your son's behalf at present.

I am, &c.  
(Signed) E. HAMMOND.

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## No. 24.

*Sir F. Bruce to Earl Russell.—(Received August 3.)*

My Lord,

*Washington, July 18, 1865.*

I INCLOSE, from a newspaper, an account of the proceedings at the trial of Burley.

It will be seen, if this report is correct, that the Judge held that Burley could not be convicted of robbery, if he held a commission from the Confederate authority, and did not appropriate the property taken to his own use. Also, that the organization of the expedition in neutral territory did not render it unlawful.

I have not heard from Mr. Burley or his Counsel since the conclusion of his trial, and I am unable to state whether further steps will be taken against him.

I have, &c.  
(Signed) FREDERICK W. A. BRUCE.

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Inclosure in No. 24.

*Extract from the New York "Daily News" of July 17, 1865.*

THE trial of Bennett G. Burley, one of the Lake Erie raiders, for robbing while on board the steamer "Philo Parsons," in September last, commenced at Port Clinton, Ohio, on Tuesday, and was concluded the following day. The trial resulted very satisfactorily

—to Burley—and which will doubtless be the last we shall hear of that noted individual. The case was tried in the Court of Common Pleas, Judge Fitch, of Toledo, presiding; and the evidence in the case was substantially the same as has previously been published. The Judge charged the jury in substance as follows:—That if they found that Burley was a regularly commissioned officer in the Confederate States' navy, and that none of the property seized had been used for private purposes, they must bring in a verdict of not guilty. He charged also that Burley, if he was commissioned as aforesaid, had a perfect right to organize a hostile expedition on neutral territory.

Notwithstanding this curious and surprising charge, eight of the jurors favoured a verdict of guilty. Four, however, kept on the opposite tack; and after a deliberation of half-an-hour, the jury returned to the Court, and announced that they could not agree on a verdict. The jury was discharged, the prisoner remanded into the custody of the authorities, and the second trial set down for the October term of the Court. The prisoner asked permission to give bail, and prosecuting Attorney Annesley, required that he should enter into 500 dollars bonds, with two sureties for his appearance for trial! (Very modest, prosecuting Attorney, that!) Mr. Russell asked, or rather suggested, that the same bail which had been fixed in this State at 8,000 dollars, should be required. The Judge, under the circumstances, compromised the matter, and fixed the bail at 3,000 dollars.

## No. 25.

*Mr. Burley to Earl Russell.—(Received August 12.)*

My Lord,

*Glasgow, August 11, 1865.*

AFTER sending the letter of the 16th June, the last I took the liberty of troubling your Lordship with, I duly received those of the 22nd and 28th same month, from the Foreign Office.

At that time I was given to understand that my son's trial was postponed until September or October; but shortly thereafter I was informed that it would take place on 11th July ultimo; this latter statement has proved correct; and, after a day and-a-half's proceedings, the trial resulted in the disagreement of the jury, and my son remanded to prison, to wait another trial, unless money to the amount of 3,000 dollars be deposited.

The Judge charged wholly in his favour, as having acted by authority of his commission and Government, and as a lawful belligerent could act. Nevertheless, the result is as above stated.

It is erroneously reported and believed, out there, that I have been largely and successfully engaged in the blockade-running, and that a deposit of money, to the amount asked, could be readily given by me. These reports are as devoid of truth as can be; but it is apparent that money as an equivalent for his release, is what is wanted; and that equivalent it is totally out of my power to give.

I have no wish to harp on the illegality of my son's extradition, and the consequent responsibility of this country and Canada; this I consider to be too evident to need repetition; the very charge of the United States' Judge to the jury who tried him, goes far to confirm this responsibility; and seeing that I cannot satisfy the demand of those who retain him, it is surely not too much to ask that those who put him into his present position, may adopt means to effect his release. His defence has already cost his relatives and friends considerable sums, and exhausted what they can do for him in that way; but whatever else can be done for him by myself and them, shall not be left undone.

I am, &c.

(Signed) ROBERT BURLEY.

## No. 26.

*Mr. Layard to Mr. Burley.*

Sir,

*Foreign Office, August 21, 1865.*

I AM directed by Earl Russell to acknowledge the receipt of your letter of the 11th instant, respecting your son's case.

I am, &c.

(Signed) A. H. LAYARD.



*Mr. Elliot to Mr. Hammond.—(Received September 15.)*

Sir,

*Downing Street, September 14, 1865.*

I AM directed by Mr. Secretary Cardwell to transmit to you, for the consideration of Earl Russell, the inclosed copy of a letter from Mr. Robert Burley, soliciting the interference of Her Majesty's Government on behalf of his son, Bennet G. Burley, who was concerned in the outrage on board the "Philo Parsons," and handed over under the Extradition Treaty, by the Canadian Government, to the United States.

Mr. Cardwell proposes, if his Lordship concurs, to inform Mr. Burley that his son's case is one in which this Department cannot interfere.

I am, &c.

(Signed) T. FREDK. ELLIOT.

Inclosure in No. 27.

*Mr. Burley to Mr. Cardwell.*

Sir,

*Glasgow, September 8, 1865.*

I TAKE the liberty to draw your attention to the case of my son, Bennet G. Burley, who was extradited to the United States on 2nd February last, by the Canadian Government, and who still lies there imprisoned, no decision being yet come to on his case. He held the commission of an "Acting Master" in the Confederate States' Navy, and was taken prisoner by the Federals in May 1864, escaped from Fort Delaware on the following July, went to Canada on his way back to Richmond, and was engaged in the attempt to release the Confederate prisoners confined in Johnson's Island, Lake Erie.

He took his departure from Detroit, a United States' Port, when entering on the expedition, which only resulted in his party capturing the United States' steamers, "Philo Parsons" and "Island Queen;" and afterwards landing in Canada, where he was arrested by the authorities of that Colony, and arraigned on several false charges in connection with these captures, all of which broke down in the Toronto Courts, when, as a last resort, the "charge of robbing the purser of the steamer "Philo Parsons" of 20 dollars, and as false as the others, was made the pretext of his surrender. His acts, in connection with these captures, were ratified and assumed by the Confederate Government, and were (when taken in connection with a war undertaking,) generous and humane, no person being injured, and personal property scrupulously respected.

He was tried on 11th July last, at Port Clinton, Ohio, on the above-mentioned "charge of robbery;" and after a day and-a-half's proceedings, the jury (notwithstanding a highly favourable charge by the Judge), did not agree to a verdict, and he was sent back to prison to wait another trial, unless bail to the amount of 3,000 dollars be deposited.

His defence has already been carried through at great expense; a new trial must necessitate a repetition of this if he is to have Counsel at all, and this is more than can be provided for him again by his relatives and friends.

From the information that has reached me, it appears clear that a sum of money as bail to be forfeited, is what is wanted by those who hold him in custody, a sort of ransom in fact.

I have brought his case, on several occasions, under the notice of the Foreign Office; but as the authorities of Upper Canada were the chief instruments in compassing his extradition, which, in view of all the circumstances of his case, must be acknowledged to have been contrary to precedent, and a violation of international law, I deem it right to bring his case before the Colonial Office, in the hope that the authorities therewith connected may see fit to adopt means to effect his release as reparation in part for his unjust surrender, either by providing the bail or forfeit, which appears to be the chief thing wanted, or by engaging Counsel for his defence on his next trial, which takes place about the middle of October. I have already stated that neither can be provided by me, or other relatives or friends, although a contrary belief and expectation appears to prevail in the quarters of his imprisonment.

I append a letter which appeared in the "Toronto Leader," during his trial in Canada, giving a correct statement of the circumstances attending the captures.

I also append a summary of the United States' Judge's charge to the jury on the

occasion of my son's trial on 11th July last, which, notwithstanding its favourable tenor, had no effect on a prejudiced jury.

I am, &c.  
(Signed) ROBERT BURLEY.

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*Summary of Judge Fitch's Charge in the case of Bennet G. Burley.*

"The evidence was clear, and the participation of the defendant was clearly proven, but the theft must be found to have been made with felonious intent; the intent was one thing, and the act another. . . . .

"A Confederate Government existed, and engaged in carrying on war; that said Confederate Government had appointed the defendant an "Acting Master" in her navy . . . . . and in obedience to the orders of his superiors, he had committed an act for which he was now arraigned.

"A state of war existed between the Federal Government and the Confederate Government so called, and it made no difference whether the United States' Government admitted it or not, the rights of belligerents must be accorded them; the charge was only applicable to a state of war." . . . . .

As a soldier of the Confederate States' Government, he had a soldier's right to capture the steamers, and appropriate her, and any money belonging to her, to the cause of his Government. . . . .

"An expedition may have all the force gotten upon the territory of a neutral Power, that it would if gotten upon an enemy's territory; the going on the boat in disguise, made no difference. Men must have authority for taking the lives of persons. A *de facto* Government could give it no difference; how frail the Government, it has the ability to grant such privileges. . . . . He had a right, if commissioned, to take the boat, money, or other property, for the furtherance of his Government. "

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No. 28.

*Mr. Hammond to Mr. Elliot.*

Sir,

*Foreign Office, September 20, 1865.*

I HAVE laid before Earl Russell your letter of the 14th instant, inclosing a copy of a letter which Mr. Burley has addressed to the Secretary of State for the Colonies, in which he applies for the assistance of Her Majesty's Government on behalf of his son, Mr. Robert G. Burley; and I am to request that you will state to Mr. Secretary Cardwell, in reply, that Earl Russell concurs in the answer which he proposes to return to Mr. Burley.

I am, &c.  
(Signed) E. HAMMOND.

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No. 29.

*Sir F. Rogers to Mr. Burley.*

Sir,

*Colonial Office, September 22, 1865.*

I AM directed by Mr. Secretary Cardwell to acknowledge the receipt of your letter of the 8th instant applying for the assistance of Her Majesty's Government on behalf of your son, Mr. Bennet G. Burley; and I am to inform you that your son's case is one in which Mr. Cardwell is unable to interfere.

I am, &c.  
(Signed) FREDERIC ROGERS.

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CORRESPONDENCE respecting the Extradition of  
Bennet G. Burley.

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*Presented to the House of Commons by Command  
of Her Majesty, in pursuance of their Address  
dated July 5, 1876.*

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1876  
NORTH AMERICA. No. 4 (1876).

---

CORRESPONDENCE

RESPECTING THE

EXTRADITION

OF

RICHARD BAKER CALDWELL.

---

*Presented to the House of Commons by Command of Her Majesty, in pursuance of their  
Address dated July 5, 1876.*

---

LONDON:

PRINTED BY HARRISON AND SONS.

[C.--1529.] Price 1½d.





RETURN to an Address of the Honourable the House of Commons, dated July 5, 1876;

*for—*

“ A Copy of Correspondence between the English Government and the Government of Canada in the matter of the Extradition of a prisoner of the name of Caldwell to the United States, in the years 1870 and 1871 :

“ And, of any Correspondence in the case of another prisoner of the name of Burley, surrendered at an earlier period.”

---

*Petition of Richard Baker Caldwell.*

To His Excellency and Lordship the Governor-General of the Dominion of Canada.

The humble Petition of Richard Baker Caldwell, of Prescott, in the County of Grenville, in Ontario, in the Dominion of Canada,

Respectfully represents,—

THAT your Petitioner has been, ever since the month of May, 1869, a resident with his family at Prescott aforesaid, engaged in establishing the business of manufacturing boards and shingles, and that his family still there resides.

That your Petitioner was forcibly taken from his said residence upon a warrant issued by his Honour Alexander Mac Nabb, Police Magistrate at Toronto, upon the information and complaint of Albert Duane Shaw, of the city of Toronto, American Consul, stating that your Petitioner was guilty of the crime of forgery, committed within the United States of America.

That said charge of forgery was entirely false, and was cunningly devised and intended for the purpose of bringing your Petitioner within the limits of the United States of America, so that he might be held amenable for certain alleged offences which were not extraditable under the provisions of the Ashburton Treaty.

That after the arrest of your Petitioner upon said charge of forgery, and after hearing the evidence offered by said A. D. Shaw to substantiate said charge, your Petitioner was, upon said charge, and by the authorization of your Lordship, in pursuance of the provisions of the Treaty between Her Britannic Majesty and the United States of America, commonly called “The Ashburton Treaty,” ratified August 9th, 1842, providing for the extradition of persons charged with certain offences, extradited and delivered over to the authorities of the United States, as by the certificate of the said Police Magistrate hereunto annexed will more fully and at large appear.

That your Petitioner, ever since he was so forcibly taken out of the Dominion of Canada, has been confined in a jail in the city of New York.

Your Petitioner further humbly shows that the charge of forgery made against him, under which he was taken from his family and home in Canada and brought to, and confined in, a gaol in New York, is wholly false, and is made colourable only by the oaths of witnesses who acknowledge that they committed the crime, and say that your Petitioner was an accessory or accomplice with them.

Your Petitioner further humbly shows that ever since he was so brought to New York, he has been anxious to be tried upon the charge for which he was so extradited.

That an indictment has been found against your Petitioner in the Circuit Court of the United States for the southern district of New York for the alleged offence under the Acts of Congress of the United States of bribing officers of the Customs,

and of the Internal Revenue Departments, and that he is about to be tried for said alleged offences, which said offences your Petitioner is advised do not fall within said Treaty known as the Ashburton Treaty, or any other Treaty between Great Britain and the United States of America.

That your petitioner, being called upon to plead to said indictment, did interpose a plea to the jurisdiction of said Court in the words following, to wit:—

“The said Richard B. Caldwell having heard the indictment against him read, says that this Court ought not to take cognizance of the offence in said indictment specified, because, protesting that he is not guilty of the same, he nevertheless says that at the time when he was arrested and brought within the jurisdiction of this Court, he was a resident of Prescott, in the Province of Ontario, Dominion of Canada, and was brought into the jurisdiction of this Court on a charge of forgery under the provisions of the Treaty between Her Britannic Majesty and the United States of America, commonly called the Ashburton Treaty, ratified August 9, 1842, providing for the extradition of persons charged with certain offences, and that the offence specified in said indictment is not one of the offences mentioned in the said Treaty, and that this Court has no jurisdiction in the premises.

“And this he the said Richard B. Caldwell is ready to verify, wherefore he prays judgment if this Court will or ought to take cognizance of the said indictment, and that he may be dismissed and discharged.”

That a demurrer was interposed in behalf of the Government of the United States, wherein and whereby the facts in said plea stated were admitted, and that the said Court thereupon rendered an opinion and judgment upon said plea and demurrer, of which an exemplified copy is hereunto annexed: and, while your Petitioner humbly craves your Lordship's attention to the whole of said opinion, he particularly prays attention to the following passage therein contained:—

“The prisoner was brought within the jurisdiction of the United States by virtue of a warrant of the Executive Authority of a foreign Government upon the requisition of the Executive Department of the United States; and, while abuse of extradition proceedings and want of good faith in resorting to them, doubtless constitute a good cause of complaint between the two Governments, such complaints do not form a proper subject of investigation in the Courts; however much those Tribunals might regret that they should have been permitted to arise.”

Your Petitioner further shows that he is advised by his counsel, and believes, and therefore respectfully submits, that it has always been the decision and determination of the Governments of Great Britain and the United States of America not to permit any person to be taken from the territory of either to be put upon trial in the other except for the particular offences specified in their mutual Treaties, and that the authorities and cases in support of this position are quoted at large in “Forsyth's Cases and Opinions on Constitutional Law,” published at London, 1869.

That it is in violation of the law of nations, and of the spirit and true intent and meaning, if not of the very language, of the Treaties between Great Britain and the United States, that your Petitioner has been taken from his home in Canada, upon pretence that he was guilty of a crime for which he might properly be extradited, and is now put on trial for an alleged offence for which extradition could not have been demanded or permitted.

Your Petitioner, therefore, humbly prays your Lordship to ask of the Government of the United States of America that it do not permit your Petitioner to be tried for any other offence than that upon pretence of which your Lordship allowed the warrant for extradition, or at least not for any offence upon charge whereof your Lordship would not have allowed said warrant of extradition to issue.

Also that the said Government of the United States of America may grant to your Petitioner an early trial for the offence whereof he was charged and extradited, and of which he avers himself innocent; or if said Government cannot or do not, within a reasonable time, establish that your Petitioner is guilty of an offence for which his extradition could be properly demanded, then that said Government cause your Petitioner, at their own expense, to be returned to his home at Prescott, in Canada.

And your Petitioner, as in duty bound, will ever pray, &c.

Dated Ludlow Street Gaol, in the City of New York, this 12th day of January, 1871.

(Signed) RICHARD BAKER CALDWELL.



Wm. Henry Authon, Counsel for Petitioner, 16, Exchange Place, New York.  
United States of America, State of New York, City and County of New York, ss.

Richard Baker Caldwell, of Prescott, in the County of Granville, in the Province of Ontario, in the Dominion of Canada, being duly sworn, doth depose and say that the foregoing Petition is in all respects true in substance and matters of fact.

(Signed) RICHARD BAKER CALDWELL.

Sworn this 12th day of January, A.D. 1871.

(Signed) WM. L. GARDNER, *Notary Public, New York City.*

State of New York, City and County of New York, ss.

I, Charles E. Soew, Clerk of the city and county of New York, and also Clerk of the Supreme Court for the said city and county, being a Court of Record: Do hereby certify that William L. Gardner, before whom the annexed deposition was taken was at the time of taking the same a Notary Public of New York dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any Court in said State, and for general purposes; and that his signature thereto is genuine as I verily believe.

In testimony whereof I have hereunto set my hand, and affixed the seal of the said Court and county the 12th day of January, 1871.

(Signed) CHARLES E. SOEW, *Clerk.*

Canada, Province of Ontario, County of York, City of Toronto. To wit:

The information and complaint of Albert Duane Shaw, of the city of Toronto, American Consul, taken on oath before me, Alexander MacNabb, Esquire, Magistrate in and for the said city, the 21st day of January, in the year of our Lord 1870.

The said informant upon his oath saith that he is informed and verily believes that one Richard B Caldwell, late of the City of New York, in the State of New York, one of the United States of America, Custom-house Broker, did at the City of New York aforesaid, within the jurisdiction of the United States of America, on or about the 3rd day of April, in the year of our Lord 1867, unlawfully and feloniously falsely make, forge, and counterfeit the endorsation "Jacob King" on the bills of exchange marked A herewith produced, with intent to defraud the United States of America against the form of the Statute in that case made and provided, and did at the said City of New York, on the day and year aforesaid, unlawfully and feloniously utter the false, forged, and counterfeit endorsation "Jacob King" on the said bill of exchange marked A, with intent to defraud the said United States of America.

The said bill of exchange drawn by F. E. Spinner, Treasurer, of the said United States of America, assuch Treasurer, on the Fifth National Bank, New York, and bearing date at the City of Washington, in the said United States of America, the 30th day of March, in the year of our Lord 1867, payable to the order of "Jacob King," at sight, for the sum of 3,819 dol. and 75 c. That the said informant verily believes from information received that the said Richard B. Caldwell is at present in the city of Toronto.

The informant, therefore, prays that a warrant may issue and justice done in the premises.

Sworn before me at the city of Toronto, this 21st January, 1870.

(Signed) A. D. SHAW, *United States' Consul.*

(Signed) A. MACNABB, *Police Magistrate.*

I, Alexander MacNabb, Police Magistrate in and for the city of Toronto, do hereby certify that the two sheets of paper annexed hereby, marked with the letters (A) and (B), contain a true copy of the information sworn before me, on which I issued a warrant for the arrest of Richard B. Caldwell; and the said Caldwell was arrested on said warrant, and committed, after hearing the evidence offered by said A. D. Shaw, to our common gaol, on said charge, and was on said charge extradited and delivered over to the United States' authorities.

In witness whereof I have hereunto set my hand and affixed my seal of office, this 18th day of June, A.D. 1870.

(Signed) A. MACNABB, *Police Magistrate.*  
(Seal.)

The President of the United States of America, to all to whom these presents shall come, greeting.

Know ye that We, having inspected the records and files of the Circuit Court of the United States for the Southern District of New York, do find certain paper-writings there remaining of record, in the words and figures following, to wit:—

(Seal of United States' Circuit Court,  
Southern District of New York.)

United States' Circuit Court, Southern District of New York.

*The United States v. Richard B. Caldwell and others.*

January 3, 1871.

(*Benedict, J.*) This case comes before the Court upon a demurrer to the plea. The prisoner has been indicted for the offence of bribing an officer of the United States.

To this indictment the defendant pleads that this Court ought not to take cognizance of the offence in the indictment, because that at the time when he was arrested and brought within the jurisdiction of this Court (he was a resident of Prescott, in the Province of Ontario, Dominion of Canada, and was brought into the jurisdiction of this Court on a charge of forgery, under the provisions of the Treaty between Her Britannic Majesty and the United States of America, commonly called the Ashburton Treaty, ratified August 9, 1842, providing for the extradition of persons charged with certain offences.

That the offence specified in said indictment is not one of the offences mentioned in the said Treaty, and this Court has no jurisdiction in the premises: to this plea the Government demurs, and thus the question is raised whether the facts set forth in the plea are sufficient to oust this Court of Jurisdiction to try the defendant for an offence otherwise conceded to be within its cognizance.

On the part of the defence reliance is placed upon sending cases in the tribunals of this State, which furnish, it is claimed, a support to the proposition of the defence that this Court has jurisdiction of the person of the prisoner for a single purpose only, namely, his trial for the crime for which he was extradited.

The cases referred to are all civil cases, wherein the service of the warrant of arrest set aside by the Court on motion because it appeared that the plaintiff in the action had resorted to fraud to procure the presence of the defendant within the territorial jurisdiction of the Court in order that he might cause his arrest, such cases do not furnish a rule applicable in criminal prosecution, nor do I find any case where a warrant of arrest of a person charged with crime at the instance of the people has been set aside because of deceit practised to bring the accused within the reach of the warrant.

But if the same rule were applicable in criminal prosecutions and in civil actions, and if the question here arose upon a motion to set aside the arrest instead of a plea to the jurisdiction, I am of the opinion that the relief could not be granted for the reason that the person of the prisoner is not within the jurisdiction of the United States by virtue of any warrant issued out of this or any court. The prisoner was brought within the jurisdiction of the United States by virtue of a warrant of the Executive authority of a foreign Government upon the requisition of the Executive Department of the Government of the United States, and while abuse of extradition proceedings and want of good faith in reverting to them doubtless constitute a good cause of complaint between the two Governments, such complaints do not form a proper subject of investigation in the Courts, however much those tribunals might regret that they should have been permitted to arise.

To hold otherwise would, in a case like the present, permit a person accused of crime to put the Government on trial for its dealings with a foreign Power. In the present case there is hardly room for the charge that the extradition proceed-



ings against the accused were in bad faith, inasmuch as the records of this Court show an indictment duly found against the accused for the crime by reason of which his extradition was granted; but whether extradited in good faith or not, the prisoner, in point of fact, is within the jurisdiction of the Court, charged with a crime therein committed, and I am at a loss for even a plausible reason for holding upon such a plea as the present that the Court is without jurisdiction to try him.

The question appears to me to be not one of jurisdiction of the Court but rather of privilege of the accused from arrest, and I cannot say that the fact that the defendant was brought within the jurisdiction by virtue of a warrant of extradition for the crime of forgery affords him a legal exemption from prosecution from other crimes by him committed.

I may add that the case of *Hulborne* which, so far as I know, is not reported, probably affords a precedent for the action of the Government in the present case.

*Hulborne* was delivered by the Government of the United States to the Government of Great Britain upon a charge of forgery; when the facts out of which the charge arose were proved before Commissioners.

The ground taken in his behalf was that the crime committed was not forgery but embezzlement. The Commissioner held otherwise; and the prisoner was extradited, but upon arrival in Great Britain he was there indicted and convicted of embezzlement upon the same facts which had been claimed before the Commissioners to show forgery. That case, therefore, presented the point now taken here, but whether it was taken upon the trial in Great Britain I do not know. I do not, therefore refer to the case as an authority, but simply notice it as perhaps a precedent.

The demurrer must be held to be well taken, but the defendant has leave to withdraw his plea, and enter a plea of not guilty.

A copy.

(Signed) KENNETH G. WHITE, *Clerk.*

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All of which we have caused by these presents to be exemplified, and the seal of the said Circuit Court to be hereunto affixed.

Witness the Honourable Salem P. Chase, Chief-Justice of the Supreme Court of the United States.

At the City of New York in the Southern District of New York, this 10th day of January, in the year of our Lord One Thousand Eight Hundred and Seventy-one, and of our Independency the Ninety-fifth.

(Signed) KENNETH G. WHITE, *Clerk.*

I, Samuel Blatchford, Judge of the said Circuit Court, do hereby certify that the foregoing exemplification is in due form of law.

(Signed) SAML. BLATCHFORD.

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*Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General on the 8th of February, 1871.*

The Committee of Council have given their attentive consideration to the annexed Report, dated 6th February, 1871, from the Honourable the Minister of Justice in reference to the Petition of Richard Baker Caldwell, who was surrendered to the United States under the Extradition Treaty, on the charges of forgery and uttering forged paper, and they concur in the opinion given in the said Report that the matter of this petition is one for the consideration of Her Majesty's Government, and accordingly recommend that it be transmitted by your Excellency to the Right Honourable Her Majesty's Secretary of State for the Colonies, so that such action may be had upon it as Her Majesty's Government may deem expedient.

Certified,

(Signed) WM. H. LEE, *W. P. C.*

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*Department of Justice, Ottawa, February 6, 1871.*

In the matter of the Petition of Richard Baker Caldwell, the Undersigned, to whom the matter was referred, has the honour to report :—

That the Petitioner was surrendered to the United States' Government under the Treaty with England on the charges of forgery and uttering forged paper.

That the Petitioner appears to have been a resident of the United States until after the alleged commission of those offences, when he removed to Canada.

That the Petitioner states that, although he was surrendered for the crimes above-mentioned, he has not yet been tried for them, and that those charges were not made *bonâ fide*, but for the purpose of securing possession of his person, and in order to put him on his trial for the offence against the laws of the United States, of bribing officers of the Customs and Internal Revenue Department.

He further states that he was indicted for the last-mentioned offence, and pleaded to the indictment, that he was surrendered and brought within the jurisdiction of the Court on the charge of forgery and could not properly be tried except for that charge. To this plea the Government of the United States demurred, and the Court decided in favour of the demurrer.

The Petitioner quotes a portion of the judgment said to have been delivered upon the occasion, as follows :—

"The prisoner was brought within the jurisdiction of the United States by virtue of a warrant of the Executive Authority of a foreign Government upon the requisition of the Executive Department of the United States, and which abuse of extradition proceedings, and want of good faith in resorting to them, doubtless constitute a good cause of complaint between the two Governments. Such complaints do not form a proper subject of investigation in the Courts, however much those tribunals might regret that they should have been permitted to arise."

The Petitioner thereupon prays by our Excellency to ask the Government of the United States that it do not permit him to be tried for any offence other than that upon pretence of which he was surrendered, and also that an early trial may be accorded to him for such offence.

The Undersigned is of opinion that the matter of this Petition is for the consideration of Her Majesty's Government, and he therefore recommends that it be transmitted to the Right Honourable the Secretary of State for the Colonies, so that such action may be had upon it as Her Majesty's Government may deem expedient.

(Signed) JOHN A. MACDONALD.

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*The Secretary of State for the Colonies to the Governor-General.*

My Lord,

*Downing Street, May 16, 1871.*

I have the honour to acknowledge the receipt of your Lordship's despatch of the 20th of February relating to the case of Richard Caldwell, who was surrendered to the United States' Government under the Extradition Treaty on the charges of forgery and uttering forged paper, and who is alleged to have been subjected to legal proceedings in the United States for an offence against the laws of that country for which he was not surrendered, and for which he was not liable to surrender under that Treaty.

I have been in communication with the Secretary of State for Foreign Affairs as to this case, and the opinion of the Law Officers of the Crown has been taken upon it.

Her Majesty's Government are advised that this is not a case in which they would be justified in claiming the surrender of the petitioner from the United States' Government.

The obligation of Great Britain under the Convention of 1842 is qualified by no other condition than that evidence of a definite kind shall be forthcoming of the fugitive having committed one of the crimes enumerated in the Convention. It appears that such evidence was produced to the satisfaction of the Canadian authorities, and the petitioner was therefore surrendered to the United States' Government.

It further appears from the decision of the Judge of the Circuit Court of the Southern District of New York, upon the demurrer of the petitioner, that he has been duly indicted for the offence by reason of which he was surrendered, and it seems that he is to be tried for it.



Her Majesty's Government are further advised that there is nothing in the Convention which would preclude the indictment of the petitioner in the United States for an additional offence which is not enumerated in the Convention, so long as such proceedings were not substituted for proceedings against him on the charge by reason of which he was surrendered.

The original inclosures which accompanied your despatch are herewith returned in compliance with your request.

I have, &c.  
(Signed) KIMBERLEY.

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NORTH AMERICA. No. 4 (1876).

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CORRESPONDENCE respecting the Extradition of  
Richard Baker Caldwell.

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*Presented to the House of Commons by Command  
of Her Majesty, in pursuance of their Address  
dated July 5, 1876.*

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LONDON:

PRINTED BY HARRISON AND SONS.



42  
NORTH AMERICA. No. 9 (1876).

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RETURN

OF

CASES OF EXTRADITION OF PRISONERS

UNDER

TREATY

BETWEEN

GREAT BRITAIN AND THE UNITED STATES.

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*Presented to the House of Lords by Command of Her Majesty.*  
1876.

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LONDON:

PRINTED BY HARRISON AND SONS.

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# Return of Cases of Extradition of Prisoners under Treaty between Great Britain and the United States.

## No. 1.

### APPLICATIONS from United States to England for the Extradition of Criminals from 1842.

| Name.                         | Date.  | Crime with which Charged.       | Result.                                          |
|-------------------------------|--------|---------------------------------|--------------------------------------------------|
| Pollock, Andrew .. ..         | 1843   | Robbery .. ..                   | Extradition refused.                             |
| Kent, John .. ..              | 1844-5 | Murder .. ..                    | Discharged by Magistrate.                        |
| Clinton, J. C. .. ..          | 1845   | Forgery .. ..                   | Result not reported to Home Office.              |
| Booth, M. .. ..               | 1850   | Robbery .. ..                   | Surrendered.                                     |
| Lowden, R. .. ..              | 1851   | Murder .. ..                    | Result not reported to Home Office.              |
| Smith, James .. ..            | 1852   | Murder on high seas ..          | Ditto.                                           |
| Paramore, John .. ..          | 1854   | Assault with intent to murder.. | Surrendered.                                     |
| Hallyman, Thomas .. ..        | 1854   | Ditto .. ..                     | Discharged by Magistrate. Insufficient evidence. |
| Shapp, Henry .. ..            | 1854   | Ditto .. ..                     |                                                  |
| Watson, Wm. S. .. ..          | 1854   | Ditto .. ..                     |                                                  |
| Collins, Ephraim .. ..        | 1854   | Ditto .. ..                     |                                                  |
| De Castro, J. M. .. ..        | 1854   | Murder .. ..                    | Result not reported to Home Office.              |
| Woods, John .. ..             | 1855   | Ditto .. ..                     | Surrendered.                                     |
| Souze, John .. ..             |        | Ditto .. ..                     | Ditto.                                           |
| Johnson, Henry Norris .. ..   | 1855   | Ditto .. ..                     | Discharged by Magistrate. Insufficient evidence. |
| Collins, James Courtney .. .. | 1856   | Ditto .. ..                     | Surrendered.                                     |
| Stephens, Charles .. ..       | 1856   | Murder on the high seas ..      | Discharged by Magistrate.                        |
| Abraham, Henry .. ..          | 1857   | Forgery .. ..                   | Surrendered.                                     |
| Burns, James .. ..            | 1858   | Murder on the high seas ..      | Ditto.                                           |
| Reed, George .. ..            | 1858   | Attempt to murder .. ..         | Ditto.                                           |
| Shield, — .. ..               |        | Murder on the high seas ..      | Ditto.                                           |
| Williamson, George .. ..      |        | Murder on the high seas ..      | Ditto.                                           |
| Thomas, John .. ..            |        | Murder on the high seas ..      | Ditto.                                           |
| Felton, J. .. ..              | 1858   | Robbery and forgery ..          | Result not reported to Home Office.              |
| McNeney, J. .. ..             | 1858   | Assault with intent to murder.. | Surrendered.                                     |
| Talbot, C. H. .. ..           | 1859   | Forgery .. ..                   | Result not reported to Home Office.              |
| Jones, Claudius .. ..         | 1859   | Assault with intent to murder.. | Surrendered.                                     |
| Boutelle, Charles .. ..       | 1859   | Murder .. ..                    | Result not reported to Home Office.              |
| White James .. ..             |        | Murder .. ..                    |                                                  |
| Hall, Philander .. ..         | 1859   | Ditto .. ..                     | Ditto.                                           |
| Davenport, Daniel .. ..       |        | Ditto .. ..                     | Ditto.                                           |
| Smith, James .. ..            | 1860   | Assault with intent to murder.. | Surrendered.                                     |
| Dower, George .. ..           | 1860   | Murder .. ..                    | Ditto.                                           |
| Lane, Edmund .. ..            | 1860   | Ditto .. ..                     | Ditto.                                           |
| Hires, Gordon .. ..           |        | Ditto .. ..                     | Ditto.                                           |
| Mitchell, Stephen .. ..       | 1861   | Assault with intent to murder.. | Ditto.                                           |
| Woods, William .. ..          | 1861   | Murder .. ..                    | Discharged by Magistrate.                        |
| Kelly, John .. ..             | 1861   | Murder on high seas ..          | Surrendered.                                     |
| Collins, Samuel .. ..         |        | Murder on high seas ..          |                                                  |
| Dunbery, John .. ..           |        | Murder on high seas ..          |                                                  |
| Featherstone, Lewis .. ..     |        |                                 |                                                  |

| Name.                                         | Date. | Crime with which charged.       | Result.                                                                        |
|-----------------------------------------------|-------|---------------------------------|--------------------------------------------------------------------------------|
| Riley, John .. ..                             | 1861  | Ditto .. ..                     | Surrendered.                                                                   |
| Smith, James .. ..                            | 1861  | Assault with intent to murder.. | Ditto.                                                                         |
| Bradford, W. B. .. ..                         | 1861  | Ditto .. ..                     | Ditto.                                                                         |
| Gorman, M. M. .. ..                           | 1861  | Murder on high seas .. ..       | Ditto.                                                                         |
| Hawkins, W. H. .. ..                          | 1861  | Ditto .. ..                     | Ditto.                                                                         |
| Astorgo, Pedro .. ..                          | 1861  | Murder .. ..                    | { P. Astorga and P. Salas surrendered.                                         |
| Marcanos, Pedro .. ..                         |       |                                 |                                                                                |
| Salas, Perfecto .. ..                         |       |                                 |                                                                                |
| Sanda, Martin .. ..                           |       |                                 |                                                                                |
| Panja, John .. ..                             |       |                                 |                                                                                |
| Rosa, Manuel Jos. .. ..                       | 1861  | Murder on the high seas .. ..   | Surrendered.                                                                   |
| Jacquire, Joseph .. ..                        |       |                                 |                                                                                |
| Duffy, Thomas .. ..                           |       |                                 |                                                                                |
| McLauren, R. N. .. ..                         |       |                                 |                                                                                |
| Miller, James .. ..                           |       |                                 |                                                                                |
| Campbell, Charles .. ..                       | 1862  | Intent to murder .. ..          | Ditto.                                                                         |
| Brun, J. .. ..                                | 1862  | Ditto .. ..                     | Ditto.                                                                         |
| Collins, W. . . . .                           | 1862  | Robbery .. ..                   | { Result not reported to the Home Office.                                      |
| Curry, — .. ..                                |       |                                 |                                                                                |
| Ruest, Francis .. ..                          | 1863  | Murder .. ..                    | Ditto.                                                                         |
| Clements, James .. ..                         | 1864  | Assault with intent to murder.. | Surrendered.                                                                   |
| Wilson, J. . . . .                            | 1864  | Piracy .. ..                    | { Result not reported to the Home Office.                                      |
| O'Brien, Daniel .. ..                         |       |                                 |                                                                                |
| Kelly, — .. ..                                |       |                                 |                                                                                |
| Windsor, C. . . . .                           | 1865  | Forgery .. ..                   | Surrendered.                                                                   |
| Ward, G. . . . .                              | 1865  | Murder .. ..                    | Extradition refused.                                                           |
| Good, Thomas .. ..                            | 1865  | A murderous assault..           | Ditto.                                                                         |
| Booth, Wilkes .. ..                           | 1865  | Murder .. ..                    | Died before any steps could be taken.                                          |
| Flint, C. C. . . . .                          | 1866  | Forgery .. ..                   | Result not reported to Home Office.                                            |
| Phillips, J. A. . . . .                       | 1870  | Ditto .. ..                     | Ditto.                                                                         |
| Seitz, Charles Frank .. ..                    | 1870  | Ditto .. ..                     | Nothing came of this case.                                                     |
| Mitchell, John .. ..                          | 1870  | Ditto .. ..                     | { Result not reported to Home Office.                                          |
| Cunningfort, James .. ..                      |       |                                 |                                                                                |
| Crunk or Crank, John Henry ..                 | 1872  | Murder .. ..                    | Discharged by magistrate.                                                      |
| Howard, Charles, or Chyiman, or Macfarlane .. | 1873  | Robbery .. ..                   | Magistrate declined to issue warrant as the charge only amounted to "larceny." |
| Raymond, S., or Seymour C. ..                 | 1874  | Forgery .. ..                   | Surrendered.                                                                   |
| Klenen, Frederick .. ..                       | 1874  | Ditto .. ..                     | Ditto.                                                                         |
| Cahill, Thomas .. ..                          | 1874  | Murder .. ..                    | Ditto.                                                                         |
| Hackett, Laurence .. ..                       | 1874  | Assault with intent to murder.. | Ditto.                                                                         |
| Meyers, Wm. Augustus .. ..                    | 1875  | Murder .. ..                    | Ditto.                                                                         |
| Lawrence, C. L. . . . .                       | 1875  | Forging and uttering .. ..      | Ditto.                                                                         |
| Smith, William .. ..                          | 1875  | Murder .. ..                    | Ditto.                                                                         |
| Miller, George .. ..                          |       |                                 |                                                                                |
| Glew, John .. ..                              |       |                                 |                                                                                |
| Brent, C. J. . . . .                          | 1876  | Forgery .. ..                   | Not surrendered.                                                               |
| Winslow, E. D. . . . .                        | 1876  | Ditto .. ..                     | Ditto.                                                                         |
| Grey, Colletso, or Morgan .. ..               | 1876  | Ditto .. ..                     | Ditto.                                                                         |

APPLICATIONS from England to the United States for the Extradition of Criminals from 1842.

| Name.                    | Date.  | Crime with which Charged. | Crime for which Sentenced. | Result.                            |
|--------------------------|--------|---------------------------|----------------------------|------------------------------------|
| Gilmour, Christina .. .. | 1843   | Murder .. ..              | .. ..                      | Result not reported to Home Office |
| Burgess, W. . . . .      | 1844   | Forgery .. ..             | .. ..                      | Ditto.                             |
| Elder, J. . . . .        | 1844   | Ditto .. ..               | .. ..                      | Ditto.                             |
| Warr, Henry .. ..        | 1845   | Ditto .. ..               | .. ..                      | Ditto.                             |
| Dolan, Patrick .. ..     | 1846   | Murder .. ..              | .. ..                      | Ditto.                             |
| O'Donnell, B. . . . .    | 1846   | Ditto .. ..               | .. ..                      | Ditto.                             |
| Managan, Kyran .. ..     | 1846   | Homicide .. ..            | .. ..                      | Ditto.                             |
| Glover, R. F. . . . .    | 1848   | Forgery .. ..             | .. ..                      | Ditto.                             |
| Glover, William .. ..    |        |                           |                            |                                    |
| Bailey, G. . . . .       | 1850   | Ditto .. ..               | .. ..                      | Ditto.                             |
| Forbes, J. . . . .       | 1850   | Ditto .. ..               | .. ..                      | Ditto.                             |
| Mathews, G. . . . .      | 1850   | Ditto .. ..               | .. ..                      | Ditto.                             |
| White, Richard .. ..     | 1850-1 | Murder .. ..              | .. ..                      | Ditto.                             |



| Name.                  | Date.     | Crime with which Charged.              | Crime for which Sentenced.                  | Result.                                                                                                                                  |
|------------------------|-----------|----------------------------------------|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| Holdsworth, —          | .. 1851   | Forgery .. ..                          | ..                                          | Result not reported to Home Office.                                                                                                      |
| Barrett, W. H.         | .. 1852   | Uttering a forged bill of exchange     | ..                                          | Ditto.                                                                                                                                   |
| Daley, D. ..           | .. 1852   | Murder .. ..                           | ..                                          | Ditto.                                                                                                                                   |
| Cain, Thomas           | .. 1852   | Attempting to commit murder in Ireland | ..                                          | Ditto.                                                                                                                                   |
| Heilbronn, Alexander.. | 1854      | Forgery .. ..                          | Embezzlement ..                             | Tried at Central Criminal Court. April 1854. Sentenced to 6 years' penal servitude.                                                      |
| McFarlane, James       | .. 1853   | Ditto .. ..                            | ..                                          | Committed suicide in Dublin.                                                                                                             |
| Calder, William        | .. 1853   | Ditto .. ..                            | ..                                          | Result not reported to Home Office.                                                                                                      |
| Bannon, Patrick        | .. 1857   | Murder .. ..                           | ..                                          | Ditto.                                                                                                                                   |
| Wilson, George         | } 1861 {  | Forging a bill of exchange             | Forging an acceptance of a bill of exchange | Tried at York Assizes, Dec. 7, 1871. G. Wilson sentenced to 4 years' penal servitude. J. S. Wilson sentenced to 5 years' penal servitude |
| Wilson, John Swallow.  |           |                                        |                                             |                                                                                                                                          |
| Chapman, Zephaniah ..  | 1863      | Forgery .. ..                          | ..                                          | Result not reported to Home Office.                                                                                                      |
| Pennington, J.         | .. 1863   | Murder .. ..                           | ..                                          | Ditto.                                                                                                                                   |
| Ross, Patrick          | .. 1863   | Ditto .. ..                            | ..                                          | This man was not surrendered. His death is reported, June 18, 1863.                                                                      |
| Müller, Franz          | .. 1864   | Ditto .. ..                            | Murder .. ..                                | Sentenced to death, October 27, 1864.                                                                                                    |
| Thorley, J. A.         | .. 1864   | Forgery .. ..                          | ..                                          | Result not reported to Home Office.                                                                                                      |
| Buxton, R. ..          | .. 1865   | Ditto .. ..                            | ..                                          | Ditto.                                                                                                                                   |
| Stevenson, James       | .. 1865   | Forgery and embezzlement               | ..                                          | Ditto.                                                                                                                                   |
| Reid, Robert           | .. 1866   | Murder .. ..                           | Murder .. ..                                | Tried at Liverpool Assizes, December 11, and sentenced to death.                                                                         |
| Greatrex, John Henry.  | 1866      | Forgery .. ..                          | ..                                          | Result not reported to Home Office.                                                                                                      |
| Hayes, M. ..           | .. 1866-8 | Murder .. ..                           | ..                                          | Appears never to have been captured.                                                                                                     |
| Dawson, George         | .. 1867   | Robbery .. ..                          | ..                                          | Result not reported to Home Office.                                                                                                      |
| Kamah, Max             | .. 1868   | Ditto .. ..                            | ..                                          | Ditto.                                                                                                                                   |
| Harwood, Clement       | .. 1869   | Forgery .. ..                          | ..                                          | Ditto.                                                                                                                                   |
| Wrighton, Robert       | .. 1869   | Ditto .. ..                            | ..                                          | Ditto.                                                                                                                                   |
| Stevens, John          | .. 1869   | Ditto .. ..                            | ..                                          | Ditto.                                                                                                                                   |
| Edwards, Thomas        | } 1870    | Murder .. ..                           | ..                                          | Ditto.                                                                                                                                   |
| Edwards, Jonathan      |           |                                        |                                             |                                                                                                                                          |
| Noonan, Dennis         | .. 1872   | Forgery .. ..                          | ..                                          | Ditto.                                                                                                                                   |
| Bidwell, George        | } 1873 {  | Forging a bill of exchange             | Forging a bill of exchange                  | Tried at Central Criminal Court, August 18, 1873, and sentenced to penal servitude for life. Bidwell was arrested at Havana.             |
| Macdonnell, George     |           |                                        |                                             |                                                                                                                                          |
| Sayer, Alfred          | .. 1873   | Forgery .. ..                          | Forgery .. ..                               | Tried at Norwich, March 20, 1873, and sentenced to 10 years' penal servitude.                                                            |
| Smith, S. A.           | .. 1873   | Ditto .. ..                            | ..                                          | Tried at Central Criminal Court, December 15, 1873, and sentenced to 12 months' imprisonment.                                            |
| Morgan, Wm. Henry ..   | 1873      | Ditto .. ..                            | ..                                          | Result not reported to Home Office.                                                                                                      |
| Laidler, Wm. J.        | .. 1873   | Ditto .. ..                            | ..                                          | Ditto.                                                                                                                                   |
| Essex, Albert          | .. 1874   | Ditto .. ..                            | Forgery .. ..                               | Tried at Central Criminal Court, August 18, 1874, and sentenced to 7 years' penal servitude.                                             |

## No. 2.

RETURN of all Cases of Extradition of Prisoners from the United States to the Dominion of Canada under Treaty between Great Britain and the United States between 1st July, 1867, and 1st May, 1876.

| Name of Prisoner.                     | Charges on which Prisoner was       |                           | Date of Writ of Recipias. | Charges on which Prisoner was Tried.      | Whether any special stipulation beyond those in Treaty was required or conceded by either country as a condition of surrender. |
|---------------------------------------|-------------------------------------|---------------------------|---------------------------|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
|                                       | Demanded.                           | Extradited.               |                           |                                           |                                                                                                                                |
| J. S. Bean, Quebec ... ..             | Arson . . . . .                     | Arson . . . . .           | 1869<br>April 16          | This is the subject of pending inquiries. | None.                                                                                                                          |
| Thos. Primrose, Ontario ...           | Murder and robbery ...              | Robbery ... ..            | 1870<br>Jan. 23           | Ditto . . . . .                           | Ditto.                                                                                                                         |
| E. P. Broughton, Ontario ...          | Forgery ... ..                      | Forgery ... ..            | 1873<br>Oct. 2            | Ditto . . . . .                           | Ditto.                                                                                                                         |
| John Dugan, Nova Scotia ...           | Murder ... ..                       | Murder ... ..             | 1874<br>Nov. 25           | Ditto . . . . .                           | Ditto.                                                                                                                         |
| Chester D. (or E.) Campbell, Ontario. | Uttering forged papers ...          | Uttering forged paper ... | 1875<br>Feb. 22           | Ditto . . . . .                           | Ditto.                                                                                                                         |
| James Bowen, Ontario . . .            | Forgery, and uttering forged paper. | Ditto . . . . .           | 1876<br>Mar. 22           | Ditto . . . . .                           | Ditto.                                                                                                                         |

RETURN of all Cases of Extradition of Prisoners from the Dominion of Canada to the United States under Treaty between Great Britain and the United States between 1st July, 1867, and 1st May, 1876.

| Name of Prisoner.                                                                        | Charges on which Prisoner was                                                        |                                          | Date of Warrant of Extradition. | Charges on which Prisoner was Tried.     | Whether any previous stipulation beyond those in Treaty was required or conceded by either country as a condition of surrender. |
|------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------------|---------------------------------|------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
|                                                                                          | Demanded.                                                                            | Extradited.                              |                                 |                                          |                                                                                                                                 |
| Henry Martin ... ..                                                                      | Robbery ... ..                                                                       | Robbery ... ..                           | 1868<br>June 13                 | Information not obtainable               | None. See papers annexed, marked "A."                                                                                           |
| John A. Smith ... ..                                                                     | Forgery ... ..                                                                       | Forgery ... ..                           | Sept. 28                        | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Frank Reno and C. Anderson .                                                             | Assault, with intent to commit murder.                                               | Assault, with intent to commit murder.   | Sept. 22                        | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Isaac Marsh <i>alias</i> J. S. Morton, and C. Bullard <i>alias</i> C. E. Thompson ... .. | Robbery ... ..                                                                       | Robbery ... ..                           | Dec. 19                         | Ditto . . . . .                          | Ditto.                                                                                                                          |
| A. Stanley <i>alias</i> Mc Donnell ...                                                   | Forgery, and utterance of forged paper.                                              | Forgery, and utterance of forged papers. | 1869<br>Feb. 18                 | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Henry Miller and Clay Matthews ... ..                                                    | Robbery ... ..                                                                       | Robbery ... ..                           | April 8                         | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Henry Travers <i>alias</i> Charles Allee ... ..                                          | Murder ... ..                                                                        | Murder ... ..                            | June 7                          | Ditto . . . . .                          | Ditto.                                                                                                                          |
| James Elliott ... ..                                                                     | Robbery ... ..                                                                       | Robbery ... ..                           | Dec. 15<br>1870                 | Ditto . . . . .                          | Ditto.                                                                                                                          |
| R. B. Caldwell ... ..                                                                    | Forgery, and uttering forged paper.                                                  | Forgery, and uttering forged paper.      | Mar. 8                          | Bribing United States' revenue officers. | Ditto. See papers annexed marked "B."                                                                                           |
| Dennis Cahill ... ..                                                                     | Assault, with intent to commit murder.                                               | Assault, with attempt to commit murder.  | Jan. 15                         | Information not obtainable               | Ditto                                                                                                                           |
| Albert J. Gould . . . . .                                                                | No charge specified; but prisoner spoken of as being now held in custody at Toronto. | Forgery ... ..                           | Jan. 21                         | Ditto . . . . .                          | Ditto.                                                                                                                          |
| George H. Hans . . . . .                                                                 | Robbery ... ..                                                                       | Robbery ... ..                           | Def. 5<br>1871                  | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Chas. Baker <i>alias</i> Thos. Wilson, <i>alias</i> Augustus Burke .                     | Forgery ... ..                                                                       | Forgery ... ..                           | Oct. 28                         | Ditto . . . . .                          | Ditto.                                                                                                                          |
| P. F. Dennehey . . . . .                                                                 | Murder ... ..                                                                        | Murder ... ..                            | 1872<br>Oct. 7                  | Ditto . . . . .                          | Ditto.                                                                                                                          |
| C. H. Foster ... ..                                                                      | Uttering forged paper ...                                                            | Uttering forged paper ...                | Dec. 24                         | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Perry Burke ... ..                                                                       | Robbery ... ..                                                                       | Robbery ... ..                           | Dec. 2                          | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Aug. Tripp ... ..                                                                        | Arson . . . . .                                                                      | Arson . . . . .                          | 1873<br>Aug. 23                 | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Emil. Lowinstein ... ..                                                                  | Murder ... ..                                                                        | Murder ... ..                            | Sept. 20                        | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Jos. Hokamo ... ..                                                                       | Ditto . . . . .                                                                      | Ditto ... ..                             | Sept. 29                        | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Samuel Fraser ... ..                                                                     | Robbery ... ..                                                                       | Robbery ... ..                           | 1874<br>Jan. 5                  | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Israel Rosenbaum ... ..                                                                  | Arson . . . . .                                                                      | Arson . . . . .                          | Feb. 20                         | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Wm. Johnson ... ..                                                                       | Uttering forged paper ...                                                            | Uttering forged paper ...                | April 13                        | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Wm. Beverley ... ..                                                                      | Assault, with intent to commit murder.                                               | Assault, with intent to commit murder.   | Oct. 9                          | Ditto . . . . .                          | Ditto. See papers annexed, marked "C."                                                                                          |
| Dabney G. Jones ... ..                                                                   | Murder . . . . .                                                                     | Murder ... ..                            | 1876<br>Mar. 21                 | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Charles Worms . . . . .                                                                  | Forgery ... ..                                                                       | Forgery ... ..                           | April 11                        | Ditto . . . . .                          | Ditto.                                                                                                                          |
| Andrew St. Martin ... ..                                                                 | Assault, with intent to commit murder.                                               | Assault, with intent to commit murder.   | April 12                        | Ditto . . . . .                          | Ditto.                                                                                                                          |

NOTE.—Steps are being taken to complete the Return as regards cases of Extradition previous to July 1, 1867.



# FURTHER RETURN

RELATING TO

## CASES OF EXTRADITION OF PRISONERS

UNDER

# TREATY

BETWEEN

## GREAT BRITAIN AND THE UNITED STATES.

*(In continuation of [C. 1557], of 1876.)*

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Presented to both Houses of Parliament by Command of Her Majesty.  
*August 1876.*

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LONDON:  
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The EARL OF DUFFERIN to the EARL OF CARNARVON.

MY LORD, Government House, Ottawa,  
24th July 1876.

I HAVE the honour of enclosing two memorandums from the department of justice, forwarding returns in reference to matters of extradition.

These returns complete the information called for in your Lordship's telegraphic message of the 26th May last.

The Right Hon. the Earl of Carnarvon, I have, &c.,  
&c., &c., (Signed) DUFFERIN.

Department of Justice, Ottawa,  
July 24th, 1876.

WITH reference to the Minute of Council of the 29th May last, on the subject of Lord Carnarvon's cable telegram of the 26th May, the undersigned has the honour to report, that by memorandum of the 1st June, the Minister of Justice presented to your Excellency for transmission to Lord Carnarvon, a partial return as proposed by the report referred to in the Minute of Council.

That return contained all the information which could be obtained upon the subject of inquiry with regard to prisoners extradited from Canada to the United States, between the 1st July 1867, and the 1st May 1876, and it also contained all the information obtainable upon the subject of prisoners extradited from the United States to Canada between the same dates, except upon the question of charges upon which the prisoners were tried; upon that question inquiries were made of the provincial authorities.

The Minister of Justice also caused communication to be had with the lieutenant-governors of the provinces with a view to obtaining the information required with reference to extraditions which took place between the date of the treaty and the admissions of the provinces into the confederation.

The undersigned has now the honour to submit a return as required by the House of Commons, embracing all such information as is obtainable upon the subject referred to in the address of that House, or which may in any manner tend to elucidate the same.

This return embraces the partial return transmitted to your Excellency on the 1st June last, and the undersigned recommends that that partial return be withdrawn, and that your Excellency should transmit to Lord Carnarvon the enclosed return lettered "A" to "Q" both inclusive, as being a full and complete return in answer to the address.

(Signed) R. W. SCOTT,  
Acting Minister of Justice.

#### CANADA.

Further return to an address of the House of Commons for a return of all cases of extradition of prisoners which have occurred under treaty between Great Britain and the United States, showing, in the case of prisoners surrendered to Great Britain, the charges on which the prisoner was demanded and those on which he was tried, and also stating in each case whether any special stipulation beyond those contained in the treaty was required or conceded by the Government of either country as a condition of surrender.

## SCHEDULE.

*Extraditions to the United States.*

- A. Statement of all cases of extradition from Upper Canada to the United States between the 9th August 1842 and the 30th June 1867.
- B. Statement of all cases of extradition from Lower Canada to the United States.
- C. Letter from the Lieutenant-Governor of Nova Scotia, relative to cases of extradition to and from the United States between the 9th August 1842 and the 30th June 1867.
- D. Two letters and enclosures from the Lieutenant-Governor of New Brunswick, relative to cases of extradition to and from the United States between the 9th August 1842 and the 30th June 1867.
- E. Telegram from the Lieutenant-Governor of British Columbia.
- F. Letter from the Lieutenant-Governor of Prince Edward Island.
- G. Statement of all cases of extradition from the Dominion of Canada to the United States between the 1st July 1867 (the date of confederation) and the 1st May 1876.

*Extraditions from the United States.*

- H. Statement of all cases of extradition from the United States to the province of Upper Canada between the 9th August 1842 and the 30th June 1867.
- I. Statement of all cases of extradition from the United States to Lower Canada.
- K. Extraditions from the United States to Nova Scotia. See letter of Lieutenant-Governor Archibald, marked "C."
- L. Extraditions from the United States to New Brunswick. See letter from Lieutenant-Governor Tilley, marked "D."
- M. Extraditions from the United States to British Columbia. See telegram from Lieutenant-Governor Trutch, marked "E."
- N. Extraditions from the United States to Prince Edward Island. See letter from Lieutenant-Governor Hodgson, marked "F."
- O. Statement of all cases of extradition from the United States to the Dominion of Canada between the 1st July 1867 (the date of confederation) and the 1st May 1876.
- P. Judgment in the case of *Regina v. Tubbee*, in which the prisoner was discharged on habeas corpus.
- Q. Judgment in the case of *Trueman B. Smith*, in which the prisoner was discharged on habeas corpus.

---

"A A."

## RECORDER'S COURT.

(Before the Recorder of the City of Toronto.)

In the matter of *Bennet G. Burley—Ashburton Treaty—Fugitive felons—British subjects—Belligerent rights—Robbery.*

Held 1. That the Ashburton Treaty as to the extradition of fugitive felons, and our Acts passed to give effect to it, extend to British subjects committing the offences named in the treaty, in the territory of the United States, and becoming fugitives to Canada.

Held 2. That it is in the discretion of the magistrate investigating into a charge under the treaty against a person accused of one of the crimes mentioned in the treaty, to receive evidence for the defence.

Held 3. That under the circumstances of the case as shown, as well on the part of the prosecution as the defence that the accused, who took the property of a non-combatant citizen by violence from his person, was guilty of robbery and liable to be surrendered under the treaty.

(Toronto, January 20, 1865.)

*Duggan, Recorder.*—On behalf of the prisoner it is urged, first, that being a British subject he is not within the provisions of the Extradition Treaty; second, that before and at the time of the committing of the acts charged as the robbery war existed between



the United States of America and the said Confederate States ; that such act was one which the prisoner, then engaged in a belligerent enterprise, had by the law of nations a right to commit.

With regard to the first point the language of the treaty, as recited in our Act 22 Vict. chap. 89. of the Consolidated Statutes of Canada is as follows:—"That Her Majesty and the said United States should, upon mutual recognition by them or their ministers, officers, or authorities, respectively made, deliver up to justice *all* persons who, being charged with the crime of murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either of the high contracting parties, should seek any asylum or be found within the territories of the other."

The terms employed are plain and most comprehensive, embracing all persons, without exception or qualification of any kind.

What persons in the words of the treaty are to be given up? Expressly "all persons who being charged," &c. That the treaty includes and was intended to include, without exception, all persons, irrespective of country or nation, I entertain no doubt, and therefore hold that the prisoner, on the ground of his being a British subject, is not exempt from its provisions. Then, as to the existence of war, I consider the existence of war proved. This important status is by the Supreme Court of the United States of America in the judgment given on March 19th, 1863, in the case of the "*Hiawatha*" and "*Amy Warwick*," distinctly recognised to be that of the contending parties taking into account the whole proceedings of the prisoner as shown in the evidence for the prosecution it may not be justly presumed that he was engaged in the enterprise which he and others acting with him professed.

But I do say that it appears clear to me, upon the evidence, that the prisoner's arrangements for the alleged enterprise, the collecting of men and arms, were clandestinely made in this country, and were partially acted upon within this country, by proceeding from it direct with these men and arms into the adjoining territory of the United States of America, and that therein, and by these means, acts of hostility and violence were waged upon its non-combatant inhabitants, this country being happily at peace and in amity with the United States of America and with its people. I consider the above acts a flagrant violation of the public law, and a gross injustice done to our country.

Then as to the taking from Ashley of his money by violence, and the putting him into peril of his life, the avowed object of the alleged enterprise was the release of the prisoners at Johnson's Island. Johnson's Island is in the state of Ohio, and far away from the scene of war and warlike hostilities.

The country around is the abode of non-combatant people engaged in the ordinary peaceful avocations of every day life, and it was through this country and amongst these people that the alleged enterprise was attempted to be carried out. Would it be lawful for the belligerent enemies of the nation to which the people belong, simply on the ground of being such enemies, without any necessity for the acts by violence, and at the peril of the lives of these people to despoil them of their effects and plunder them at will? It is said by writers on international law that by the modern usage of nations which has now acquired the force of law, private property on land is exempt from confiscation, with the exception of such as may become booty in special cases, when taken from enemies in the field or in besieged towns, and military contributions levied upon the inhabitants of the hostile territory. It is not pretended that the prisoner committed the act complained of under any of the circumstances suggested. Ashley when deprived of his money by violence, and at the peril of his life was to the knowledge of the prisoner such a non-combatant as I have described. If the prisoner on the occasion in question had an absolute right, without necessity of any kind, then to take Ashley's money at the peril of his life, would he not equally have had the right in like manner by violence to despoil of his money and effects every other non-combatant United States citizen whom he might happen to meet and choose to attack under colour of carrying out, or because of being engaged in a belligerent enterprise? I do not find that such a right exists or is sanctioned by the code of Christian and enlightened nations.

I have herein endeavoured to give all the facts and circumstances material on this proceeding, and I have now to state, in conclusion, that I find and determine that the evidence taken before me according to the laws of this province on the charge of robbery here preferred against the prisoner Bennet G. Burley, would justify the apprehension and committal for trial of the said Bennet G. Burley according to the laws of this province, for the said robbery if the same had been committed in this province.

Order for committal.

## A.

RETURN of all cases of Extradition of prisoners from the Province of Upper Canada to the United States under Treaty between Great Britain and the United States, between 9th August 1842 and 30th June 1867.

| Name of Prisoner.                   | Charges on which Prisoner was                      |                                                           | Date of Warrant of Extradition. | Charges on which Prisoner was tried. | Whether any special stipulation beyond those in Treaty was required or conceded by either country as a condition of surrender. |
|-------------------------------------|----------------------------------------------------|-----------------------------------------------------------|---------------------------------|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
|                                     | Demanded.                                          | Extradited.                                               |                                 |                                      |                                                                                                                                |
| Jane Glene                          | Murder                                             | On charge demanded                                        | 28th June 1849                  | Information not obtainable.          | None.                                                                                                                          |
| James McCaffrey                     | "                                                  | "                                                         | 5th March 1850                  | "                                    | "                                                                                                                              |
| Gabriel Wright and John Guile.      | Burglary and assault with intent to commit murder. | Wright only extradited on charge of burglary and robbery. | 10th May 1850 -                 | "                                    | "                                                                                                                              |
| James McNally                       | Murder                                             | On charge demanded                                        | 20th Nov. 1855 -                | "                                    | "                                                                                                                              |
| Alexander Catter                    | "                                                  | "                                                         | 28th May 1855 -                 | "                                    | "                                                                                                                              |
| George Pollett                      | "                                                  | "                                                         | 31st May 1858 -                 | "                                    | "                                                                                                                              |
| Owen Dudley                         | Forgery                                            | "                                                         | 29th Oct. 1858 -                | "                                    | "                                                                                                                              |
| Charles Miller and Catherine King.  | "                                                  | "                                                         | 14th Dec. 1858 -                | "                                    | "                                                                                                                              |
| Henry Kaiples                       | "                                                  | "                                                         | 17th Aug. 1859 -                | "                                    | "                                                                                                                              |
| John Fauell                         | Robbery                                            | "                                                         | 13th May 1859 -                 | "                                    | "                                                                                                                              |
| Joseph Bocarde                      | Uttering forged paper                              | Forgery                                                   | 26th Jan. 1860 -                | "                                    | "                                                                                                                              |
| Nelson Fenihart                     | Robbery                                            | On charge demanded                                        | 24th July 1863 -                | "                                    | "                                                                                                                              |
| Asher Warner                        | Uttering forged paper                              | "                                                         | 1st Oct. 1864 -                 | "                                    | "                                                                                                                              |
| *Bennet G. Burley                   | Robbery                                            | "                                                         | 31st Jan. 1865 -                | "                                    | "                                                                                                                              |
| Clarence Madigan                    | Forgery and uttering forged paper.                 | "                                                         | 20th Feb. 1865 -                | "                                    | "                                                                                                                              |
| Paul Nestler                        | Forgery                                            | "                                                         | 4th May 1865 -                  | "                                    | "                                                                                                                              |
| Alexander McConnell                 | Murder                                             | "                                                         | 21st April 1866                 | "                                    | "                                                                                                                              |
| George Peet                         | "                                                  | "                                                         | 19th April 1866                 | "                                    | "                                                                                                                              |
| John Bortles and Thomas W. Bortles. | Assault with intent to kill.                       | "                                                         | 9th March 1866                  | "                                    | "                                                                                                                              |
| Samuel R. Lewis                     | Uttering forged paper                              | "                                                         | 4th March 1867                  | "                                    | "                                                                                                                              |
| David Rose                          | "                                                  | "                                                         | 26th March 1867                 | "                                    | "                                                                                                                              |

\* See papers annexed marked "A A."

## B.

RETURN of all cases of Extradition of prisoners from the Province of Lower Canada to the United States under Treaty between Great Britain and the United States, between 9th August 1842 and 30th June 1867.

| Name of Prisoner.                        | Charges on which Prisoner was |                    | Date of Warrant of Extradition. | Charges on which Prisoner was tried. | Whether any special stipulation beyond those in Treaty was required or conceded by either country as a condition of surrender. |
|------------------------------------------|-------------------------------|--------------------|---------------------------------|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
|                                          | Demanded.                     | Extradited.        |                                 |                                      |                                                                                                                                |
| Joel Dake                                | Forgery                       | On charge demanded | 3rd Nov. 1844 -                 | Information not obtainable.          | None.                                                                                                                          |
| William Robinson                         | "                             | "                  | 27th Feb. 1849 -                | "                                    | "                                                                                                                              |
| David F. Moore                           | "                             | "                  | 20th Sept. 1849                 | "                                    | "                                                                                                                              |
| Bela S. Worthen and James G. Cawley.     | Burglary and larceny          | "                  | 29th Sept. 1849                 | "                                    | "                                                                                                                              |
| Michael P. Mandigo and Catherine Fadden. | Uttering forged paper         | "                  | 9th Aug. 1851 -                 | "                                    | "                                                                                                                              |
| Joseph Chase                             | Arson                         | "                  | 31st May 1851 -                 | "                                    | "                                                                                                                              |
| Frank Murray alias Frank Morin.          | Robbery                       | "                  | 4th Nov. 1852 -                 | "                                    | "                                                                                                                              |
| P. B. Kingsley and William Brown.        | Uttering forged paper         | "                  | 26th Aug. 1853                  | "                                    | "                                                                                                                              |
| John Gill and Matthew Matthews.          | Forgery                       | "                  | 27th July 1854 -                | "                                    | "                                                                                                                              |
| William Rankin                           | Murder                        | "                  | 18th March 1854                 | "                                    | "                                                                                                                              |
| Leonard L. Cross                         | Forgery                       | "                  | 27th June 1859 -                | "                                    | "                                                                                                                              |
| Henry Janowitz                           | "                             | "                  | 22nd Aug. 1859                  | "                                    | "                                                                                                                              |
| William H. Crawford                      | Assault with intent to kill.  | "                  | 24th Jan. 1865 -                | "                                    | "                                                                                                                              |
| Henry Roberts                            | Forgery                       | "                  | 1st Dec. 1865 -                 | "                                    | "                                                                                                                              |



"C" and "K."

(Copy.)

Government House, Halifax, N.S.,

June 6th, 1876.

Sir,

I HAVE the honour to acknowledge the receipt of Mr. Under-Secretary Langevin's despatch, No. <sup>1113</sup><sub>697</sub>, under date of the 31st ultimo, requesting me to cause to be prepared and transmitted to your department with the least possible delay a return of the cases of extradition in the province of Nova Scotia between the 9th August 1842 and the 30th June 1867.

I immediately on receipt of the despatch set on foot inquiries on the subject.

I have ascertained through the Chief Justice and the other judges of the Supreme Court, that within the period referred to no cases of extradition have occurred in this province either of persons found in Nova Scotia charged with offences committed in the United States and claimed under the treaty by the Government of that country, or of persons found in the United States charged with offences committed in Nova Scotia, and claimed by our authorities from those of the United States.

The records of extradition proceedings should properly be kept in the office of the prothonotaries.

Under our system of judicature each county has its own prothonotary's office, and the records, if any there were, would be found among those different offices.

It could obviously be impossible to make searches in 18 offices scattered over the province without incurring an amount of delay which would render the returns probably useless for the purpose for which it is sought.

But as any case of the kind could hardly have occurred without having come within the cognizance of some one of the gentlemen who are now judges of the Supreme Court, I think I may safely base my report upon their statements.

Indeed, I should not feel that I could so well rely upon the correctness of any report founded on searches made by the county prothonotary among papers not too well kept as I could on the correctness of statements made by legal gentlemen who could scarcely fail to have known of any case of the kind if it had occurred.

I have, &c.,

(Signed)

ADAMS G. ARCHIBALD.

The Hon. the Secretary of State, Ottawa.

"D" and "L."

(Copy.)

Government House, Fredericton,

June 3, 1876.

Sir,

I HAVE the honour to acknowledge the receipt of your despatch, No. 1114 on 697, of 31st May, informing me that a telegram had been received by His Excellency the Governor-General from the Right Hon. the Secretary of State for the Colonies, stating that the House of Commons had voted an address for a return of all cases of extradition of prisoners, under the treaty between Great Britain and the United States, showing the charges on which the prisoner was demanded, and those on which he was tried; also whether any special stipulation beyond those in the treaty was required or conceded by either country as a condition of the surrender; and requesting me to furnish to your department a return of the cases in this province between the 9th August 1842, the date of the treaty, and the date of the entry of the province into the Dominion.

As the extradition of prisoners from the United States to this province, and from the province to the United States, was mainly, if not entirely, arranged by correspondence between the Lieutenant-Governors and the United States authorities, the information sought could only be furnished in a complete form by reference to that correspondence, the removal of all despatches and official letters at the time of confederation to the Colonial Office, London, or to the office of the Governor-General, Ottawa, renders it impossible to furnish the data asked for; but inquiries will be made of the Clerk of the Crown, and other officials, and the result of such inquiries communicated to you as soon as obtained.

I have, &c.,

(Signed)

S. L. TILLEY,

Lieutenant-Governor.

The Hon. the Secretary of State  
for Canada.

(Copy.)

Government House, Fredericton,

June 20, 1876.

SIR,

REFERRING to my despatch of the 3rd instant, in answer to yours, 1114 on 697 of 31st May, requesting me to furnish you with a return of all cases of extradition of prisoners under the treaty, of the charges under which the prisoners were demanded, and those under which they were tried, and whether any special stipulation was required or conceded in any case, I have the honour to inform you that having made diligent inquiry of the judges, the Clerk of the Crown, the police magistrate of the city of Saint John, and other officials, the only case I can afford any detailed information of is the case of the "Chesapeake" prisoners arrested on a charge of piracy and murder in the year 1864; I transmit herewith a printed copy of this case, and I also enclose a copy of the letter of the police magistrate of Saint John in answer to my inquiries on the subject of your despatch. Between the years 1852 and 1854 a case occurred in which the United States authorities refused to surrender some soldiers who deserted from the Guard House at Government House, Fredericton, having previously robbed the sergeant of the guard, on the plea that the proofs of the robbery were incomplete. I am, however, unable to procure any record or document connected with the case.

I regret that in consequence of the reasons mentioned in my previous despatch on this subject, dated 3rd June, I am unable to furnish you with more explicit or detailed information on the matter.

I have, &amp;c.,

(Signed)

S. L. TILLEY,

Lieutenant-Governor.

The Hon. the Secretary of State  
for Canada.

(Copy.)

Saint John, June 7th, 1876.

DEAR SIR,

I AM in receipt of your communication of the 3rd day of June instant, and beg to submit for the information of his honour the Lieutenant-Governor of the province of New Brunswick, that I was appointed police magistrate of the city of Saint John on the 1st day of May in the year of our Lord 1858, that since that date the only case that in which an application was made by the United States authorities for the extradition of persons charged with one of the offences enumerated in the treaty of 1842, was the case of the "Chesapeake" prisoners charged with piracy and murder on the high seas, that after a preliminary examination I committed them for extradition, and they were committed to the common gaol of the city and county of Saint John for that purpose, and were subsequently discharged by his honour Mr. Justice Ritchie, that during the examination of the "Chesapeake" prisoners on the said charge, no mention of any stipulations of any kind were made beyond those of the treaty, or that they were to be tried for any other offence other than what they were asked to be extradited for, that I have at times issued warrants to send to the United States of America to bring persons back for offences under the treaty, but none of them were ever handed over; in one case A. Marion A. Warren charged with the utterance of forged paper came back of her own accord and free will, and was placed on trial before a jury of the country in the county court of the city and county of Saint John and was acquitted.

That as the law stands now I have no jurisdiction in extradition cases.

I have, &amp;c.,

F. John Saunders, Esq.,  
Private Secretary.

(Signed)

H. GILBERT,

P.M.

"The Chesapeake."—The case of DAVID COLLINS, et al., prisoners arrested under the provisions of the Imperial Act, 6 & 7 Vict. cap. 76., on a charge of piracy, investigated before Humphrey T. Gilbert, Esq., police magistrate of the city of Saint John, and the arguments on the return to the order of habeas corpus, before his honour Mr. Justice Ritchie, with his decision. Compiled from the original documents.

The importance and peculiar circumstances of this case have induced the publishers to present to the public all the proceedings taken before the police magistrate, and also before his honour Mr. Justice Ritchie, with the evidence in full and the various documents



on which the arrest was made, together with those produced in evidence on the investigation.

Every effort has been used to publish a correct report, and the publishers in the compilation have had the assistance of Charles W. Weldon, Esq., one of the counsel engaged, and of William M. Jarvis, Esq., the reporter to the Law Society of Decisions at Chambers.

As this is the first case which has arisen in New Brunswick under the Treaty of Extradition of 1842, and the object and nature of the tenth article of the treaty, with the mode of procedure thereunder are so fully discussed, and other questions of international law presented, that the publishers believe that the publication will be of interest to the people not only of this province but also to those of the neighbouring colonies and the United States.

“The Chesapeake,” DAVID COLLINS, et al.

Shortly after the retaking of the “Chesapeake” in Sambro, Nova Scotia, some of the original captors having returned to this province, the United States Consul in Saint John addressed to the Hon. S. L. Tilley, the provincial secretary, two letters under date 22nd December 1863.\* Accompanying these letters was an affidavit jointly made by Isaac Willett, captain, and Daniel Henderson, second mate of the steamer, detailing the facts within their knowledge concerning the capture of the steamer, the said affidavit having been sworn to before H. T. Gilbert, Esq., police magistrate and a justice of the peace for the city and county of Saint John, on the twenty-second day of December, A.D. 1863. On these papers His Excellency the Lieutenant-Governor, issued a warrant† under the provisions of the Act of Parliament 6 & 7 Vict. cap. 76.‡

Mr. Gilbert, on receiving His Excellency’s warrant, took the complaint§ of Captain Isaac Willett, and on the 25th day of December issued his warrant|| to apprehend certain persons therein named, upon which warrant David Collins, James McKinney, and Linus Seely, parties named therein, were arrested and brought before Mr. Gilbert for examination on January 4th, 1864.

Andrew R. Wetmore, Esq., Q.C., and William H. Tuck, Esq., appeared for the prosecution on behalf of the Federal authorities.

Hon. John H. Gray, Q.C., and Charles W. Weldon, Esq., appeared for the prisoners on behalf of the Confederate States.

*Preliminary Examination.*

Before the examination commenced Mr. Gray asked Mr. Wetmore to elect upon which charge he would now proceed, and to state in whose name he was proceeding. Mr. W. replied that he would only state that he was proceeding upon the complaint of Isaac Willett. He first stated that he would take up the charge of murder, and subsequently decided to proceed with that of piracy, in the first instance. Mr. Gray then objected:—

1. That this court has no power or jurisdiction to try for the offence of piracy. That for the trial of piracy a Special Commission must issue and a court be specially constituted for the purpose; and that such court is distinctly provided for by the Imperial Act.

2. That the warrant was insufficient. It does not show upon the face facts which are essential under the treaty with the United States, to bring this matter into the courts of this province, or to create the special jurisdiction, which enables us to arrest parties under those charges. [Mr. Gray cited the case of Dillan, charged with an offence on the sea beyond provincial jurisdiction who was arraigned before Judge Parker at the last circuit and discharged. And Mr. Weldon cited the case of the brig “Eliza,” in ’47.]

3. Not only is the warrant insufficient on these grounds, but on the face of it is bad, as charging two distinct offences triable before two different tribunals. There ought to be two warrants.

Mr. Gray thought these objections fatal to any proceedings. Mr. Wetmore replied at some length, and read a large portion of the Imperial Act passed to give effect to the Extradition Treaty. He claimed that everything so far was regular, and that the magistrate could not go back of the warrant, which was sufficient authority for him. The magistrate told Mr. Gray that there was probably something in his argument, but that at present he would proceed with the preliminary examination, and if he decided before the case was through that he had no jurisdiction he would give the prisoners the benefit of it.

\* See Appendix A.

† See Appendix B.

‡ See Appendix C. and D.

§ See Appendix E.

|| See Appendix F.

The following witnesses were then examined:—

*Evidence of Captain Willett.*

Captain Isaac Willett sworn: Am a citizen of the United States—live in Brooklyn—a seaman for 30 years—know the “Chesapeake,” owned by H. B. Cromwell, also a citizen of U. S.—was master of her in December, and had been for 17 months—she was rebuilt in New York about three years ago—previous to that she was called the “Totten”—[Mr. Wetmore asked where she was registered? Both Messrs. Gray and Weldon objected to the question as improper. The magistrate agreed with them.] During the 17 months the vessel plied between New York and Portland—she had a coasting license. [Mr. Gray objected to any evidence respecting contents of this license; objection sustained.] He had the paper until it was taken away from him on board the ship. On the 4th and 5th December I had charge of the “Chesapeake,” then lying in North River taking in cargo for Portland. Most of the freight was taken in on the 5th, Saturday. She carried passengers also. I saw these three prisoners on board on the trip in question. Saw them first about supper time, about 6 o’clock in the evening. We left New York on the 5th December; I was in the wheel house when the vessel left the wharf. They did not buy tickets, paid their money on board. I identify Collins and recognize the others. I wrote their names on a piece of paper and gave it to stewardess to arrange rooms for them. [Wetmore asked the names of the other persons on board. Gray objected; objection over-ruled.] There was a person who called himself John C. Braine, said he was colonel. Understood there was a person named Brooks—don’t recollect the names of Seely and Clifford. All the passengers paid their passage except two. We proceed direct to Portland from New York; do not call. The vessel, a propeller, was worth \$60,000 to \$70,000. There was an assorted cargo, flour, sugar, wine, and such like. Do not recollect the owners—do not know its value—probably \$80,000 to \$100,000.

There was no disturbance until Monday morning, 7th. We were then about 20 miles N.N.E. of Cape Cod. Cape Cod is in the United States. About a quarter past 1 in the morning, the first thing I knew, the chief mate, Charles Johnston, came to my room and called me, saying somebody had shot the second engineer, Orin Shaffer. I turned out of my room and went to see how badly he was shot, and had hardly time to get out of my room before I was shot at. I was at the engine-room door, on the upper deck where my room was. I found the body of the second engineer lying on the deck; it is more than I could tell whether he was alive or dead; he appeared to be dead. I was in the act of stooping down to raise him up when I was shot at twice. I then walked forward and was shot at again. I supposed to be from a pistol; next day I saw two places in the deck where pistol balls had gone through right by where I was. I can’t tell who shot at me. I only saw two persons then. I cannot identify either of these prisoners as the parties. I saw no marks of violence on the engineer, but I saw marks of blood where his head lay. When I walked forward I was going into the pilot house, when I was collared and a pistol was put to my face by First Lieutenant H. A. Parr, who was in the pilot house. He collared me and said I was his prisoner in the name of the Southern Confederacy. Parr put the irons on me—two or three others stood beside him. They seemed to be standing there doing nothing. He put handcuffs on each wrist. The irons could be made small or large. They put me into my own room; I could have come out when I pleased. No use for them to lock the door. I don’t know what became of the body of the second engineer, except what I heard from the others. I was confined an hour, when Parr and sailing master Robinson came to me. They didn’t say much, but took me into the cabin—there I saw some of the other passengers who were not concerned in the affair. While I was there the chief mate, Charles Johnston, and chief engineer, James Johnson, were brought in wounded; I had heard reports of fire-arms. The mate was wounded in the right knee and left arm. The wounds appeared to be made by pistol shots. I saw the leaden ball taken out of the mate’s arm. He suffered considerably from the knee, not so much from the arm. Lieutenant Parr took the ball out of the arm. The chief engineer was wounded by a ball in the hollow of the chin. Parr said he would get the balls out of them if he could, and fix the wounds. The chief mate laid on a lounge until he was put on board of the pilot boat. I remained in the after cabin until eight next morning. The irons were then taken off and Robinson went up to my room on deck with me; I was in the room a few minutes and returned to the cabin. When on deck I saw Collins and Seely there; Seely was scrubbing brass on one of the timber heads; the others did not appear to be doing anything in particular.

Colonel John C. Braine took my ship’s papers from me in the afternoon before I was landed in the pilot boat. Braine seemed to have command of the vessel; she was taken from me by these parties, against my will and consent. I saw Mr. McKinney on board



the vessel. They seemed to be about the vessel and appeared to be eating the grub up as fast as possible. Don't recollect of seeing McKinney doing anything. The person who was navigating the vessel was named Robert Osburne, a passenger, one of the six who bought tickets in New York. None of the parties named in the warrant had tickets. The first land we made after they took possession was Mount Desert. I asked them where they were going, they said Grand Manan; I asked where they intended to land me, they said Saint John. Mount Desert is on the American coast east of Portland. I would not see it if I were prosecuting a voyage from New York to Portland. After passing Mount Desert we saw land east of that place. We proceeded to Seal Cove Harbour, Grand Manan. The boat was lowered, three or four men went ashore, remained a little while and came on board again, when the steamer left and came up the bay to Saint John. Next I was taken up to my room by Braine and Parr; Parr made a copy of Braine's instructions and Braine gave it to me. He ordered me to give up the coasting license, and permits for the cargo, and the money I had collected from Braine for his party, in all \$87. He asked for the money he had paid over to me; it was my employer's money; I knew it would be worse for me if I did not; I handed it over against my will; Braine had a pistol in his hand at the time; I handed money, ship's papers, and permits to him. The "papers" were the ship's "coasting license" from the New York Custom House, under which she was coasting at the time, as required under the American law. After this they (Braine and Parr) took me away from the room, took me aft and ordered me to stay there. We then saw a pilot boat. We were on our way to Saint John. The pilot boat ordered us to stop; some one came on board the steamer from her, stayed a few minutes and returned. Then Captain John Parker came on board and apparently took command. They then took the pilot boat in tow and steamed up to Dipper Harbour. All of the passengers and crew, except two engineers (James Johnston and Auguste Striebeck) and three firemen (Patrick Connor was one), were put on board the pilot boat. The fireman and engineers were kept against their will. Those who went on board the pilot boat were myself, Charles Johnson, chief mate, Daniel Henderson, three boys and four sailors, whose names I do not recollect, the stewardess and five passengers. One of the passengers belongs some 30 miles back of Saint John, the other four belonged to Maine. These five passengers had tickets. Robert Osburne remained on board the "Chesapeake;" he also had a ticket. The steamer towed the boat some five or seven miles and let go of us; we were put on board the boat about five in the evening; that was the last we saw of the steamer. I landed in Saint John about four on Wednesday morning. I got a boat from a big ship near Partridge Island and came to town with four of my men and two passengers. From the way the parties acted in my steamer I was afraid of my life. Everything was taken against my will. I saw one or two of these prisoners on watch; they were on deck. I supposed they were on watch. They seemed to be acting as other men would who were on watch. Braine's party assisted him in charge of the vessel. As far as I know these men were assisting him. I did not see them making sail or shoveling coal. I don't recollect of seeing Collins or McKinney doing anything, except being on deck.

Cross-examined by Mr. Gray: I don't deny there has been war in my country for two or three years between those calling themselves Confederate States and the United States. [Mr. Wetmore objected to this as an improper way of proving a state of war. The magistrate did not think this evidence could be shut out.] I can't remember how many states are called the Confederate States—Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, (about one third of the latter). Abraham Lincoln is President of the United States, and Jefferson Davis President of the Confederate States. I never heard of Mr. Benjamin, Confederate Secretary of War. I have heard they have a Government. I have read Lincoln's proclamation of war against the South, ordering them to destroy the property of the South, but I do not recollect its contents. I never took notice of it to—[Here the witness was stopped].

Parr did put a pistol to my head in the pilot house and said he took me prisoner in the name of the Southern Confederacy. They put the irons on me rather hard. They did not say anything about taking the vessel in the name of the Confederate States then. After they took the handcuffs off there was always a guard with me when I went about. I did not see any act of violence towards the passengers after the capture of the vessel. The handcuffs were also removed from the officers. I left a copy of the "instructions," which Braine left with me, in New York. [Mr. Gray asked the captain the substance of these "instructions;" Mr. Wetmore objected. Mr. Gray argued the point, and then read from manuscript a copy of Captain Parker's order to Braine, (which Captain Willett had published in the *New York Herald* and other papers), and asked the captain if the copy was correct. The witness said it was nearly correct. The name

of the sailing master in the copy handed him by Braine was George Robinson, not Tom Sayers; the name of the engineer was not given in it, and the number of the men stated was 11, not 22. In other respects Mr. Gray's copy was correct.]\*

The Confederates kept of my private property, one double-barrelled gun, one single-barrelled, five five-barrelled revolvers, and one six-barrelled revolver (I did not come out of my room "in what they called my shirt tail.") They kept me aft and plundered my room. They took three coats. I missed them when I commenced to pack up. I brought ashore my clock, eight charts, sextant, three books. The passengers also brought ashore their own things. I did not see Braine give the passengers money to take them back to New York. The crew brought part of their things ashore. They put us into the pilot boat six or seven miles this side of Dipper Harbour. I did not see and do not know that the Confederate flag was raised over the vessel. They fired two shots at me, and I don't know how many more. The first two shots were fired at 12 feet. They must have been bad shots. The "Chesapeake" had two six-pounders forward, and of ammunition half a keg of powder. No cutlasses. The Confederates who cut out the "Caleb Cushing," at Portland were sent to Fort Warren; I have heard so. The "Chesapeake" was engaged in retaking the "Caleb Cushing." I saw the Confederates who were then taken, they were sent to Fort Preble. I do not know that those Confederates were ever tried as pirates or in any other way. Only Lieutenant Parr told us that their party was acting for the Confederate States. They all seemed to be working together, and were working under Parr and Braine. I was not at Sambro, and did not see the steamer after I got into the pilot boat. None of my crew to my knowledge were kept in irons the next day—the day after the capture. I never saw or heard of Braine or Parr before.

Re-examined by Mr. Wetmore: I have heard the Confederates called rebels in the northern States generally. The "Caleb Cushing" was lying at a wharf in Portland Harbour when captured. Braine was called colonel; the parties all seemed to be working together. I cannot tell whether Braine paid the passage of these three men, the prisoners.

*Evidence of Daniel Henderson.*

January 6th, 1864.

Daniel Henderson, sworn: I belong to Portland, Me. I was second mate of the "Chesapeake" in the beginning of December. Five or six years ago I was employed on board her, and had been for two or three years. She was called the "Chesapeake" then, and traded from New York to Savannah, Charleston, and Baltimore, and sometimes to Portland. She had previously been called the "Totten," but when she was rebuilt her name was changed. She was owned in New York by H. B. Cromwell. She was latterly employed in the trade between New York and Portland. She lay in North River, New York, at Pier 9, on December 4th and 5th, and took in considerable cargo. She had a great deal of wine and cotton, and was nearly full. She left on Saturday 5th, about 4 in the afternoon. She had 22 passengers. This was not an unusually large number. She sometimes had 50, or 60, or 70. The crew numbered all told, including the stewardess, 18. I paid no particular attention to the passengers, and the only one I knew was Braine, who had been a passenger from New York to Portland about a fortnight before, and then had a wife and child with him. He then said he had just come from England. The voyage usually occupied 36 to 37 hours.

On Sunday night at twelve o'clock my "watch" was over and I went to bed. My room was on deck, immediately adjoining the pilot house. I had not been in bed more than an hour and a half when four men came to my door, broke the lower panel, and then opened the door. This awoke me. The four men then stood holding pistols over me, pointed at me, and bade me get up and put on my clothes. I did so. They then ordered me to put my hands together and hold them up, and they put handcuffs or irons on me. They told me when doing this that I was a prisoner to the Confederate States. I asked them if I could not see the captain or some one belonging to the vessel. They told me "I couldn't see nobody." They then locked me in my room. About ten minutes after I heard a noise as if of a man falling on the deck near the pilot house door, and I then forced the door of my room open. The deck was covered with ice and I slipped and fell, and then two of those other fellows caught me by the shoulders and hauled me into the pilot house, where I sat in a corner.

About 20 minutes after Braine came in and said that the second engineer had been killed and thrown overboard. Several of those fellows went in and out of the pilot house while

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\* The order put in by Mr. Gray will be found in Appendix H.



I was there. The prisoner Seely, who seemed to be keeping watch forward, went in twice to warm himself. A big tall fellow, with a long sandy beard, was steering. Neither of the other prisoners went in. He stayed some time there. One of the other fellows, an officer, came to me and asked me where the paint was, I told him in the paint lockers. The officer then ordered me to show him where it was, and I went down and showed him. The officer said they wanted to paint out the steamer's name, and the yellow streak on the funnel. The officer held a pistol in his hand. I asked him to have the irons removed, but the officer refused. They were not taken off until the next morning about 7.30 o'clock. I was taken to the passenger cabin and found the mate there wounded in the right leg and left arm, lying on a mattress, and the engineer wounded in the chin, and others of the crew and passengers. I asked Braine to allow me to sit by the mate and attend him. Braine said he would see what could be done, and sometime after told me I could sit with the mate, and I did so and washed his wounds. A man armed with a revolver sat by them, and another, also armed, kept guard at the cabin door. The prisoner McKinney was at one time on guard, and was armed. When breakfast was ready they were taken to breakfast. Two men armed with revolvers stood on each side of the breakfast table, and McKinney, armed, stood on the stairs outside. I went on deck two or three times during the day, having obtained permission to do so. No guard accompanied me, but armed men kept guard on both sides of the steamer. Collins was one of the men on guard, and held a pistol in his hand. I saw Seely cleaning some brass work on the timber head. I was kept close prisoner all day, and pretty well down. At night they were all ordered below, the officers were put in the cabin and the rest of the crew in the fore-castle, except the firemen, who they kept at work. About six o'clock one of the officers, with a pistol in his hand, came down to the cabin, and ordered me to go up and show them how the bells from the pilot house to the engine-room where worked. I did so, and then asked where all our men were, and the officer told me they were down in the fore-castle.

Next morning they made Grand Manan. Braine came down to the cabin and ordered me go up and get ready the anchor to let go when they wanted to. This was, I understood, at the suggestion of the man who belonged to the other passengers, and not to those fellows, but who was acting as pilot for them. Braine, with a pistol in his hand, and the other man, stood over me while I prepared the anchor. They reached a harbour and the anchor was let go. They then had breakfast. I did not eat much. I was too uneasy, as I did not know what was to become of me. I could not get any of them to tell me, and I did not know but I might have to go over the rail. After breakfast they lowered a boat and Braine and two or three of his men, as well as I could see through the cabin windows, went ashore. They remained two or three hours, then returned and weighed anchor. Sometime after they met a pilot boat. The boat ordered the steamer to stop, and a man came on board the steamer from the boat, stayed some time, then went back to the boat, and soon after he and another man came on board the steamer and brought a valise.

I was kept aft on deck at the time, and could see what went on, but could not hear what was said. The man went forward to the pilot house; could not tell what his name was, or whether he took command. This was two or three hours after they left Grand Manan. The steamer then proceeded towards Saint John, having the pilot boat in tow. Sometime after, all of our crew were put on board the pilot boat except the two engineers and three firemen, who were kept on board the steamer, and five of the passengers were also put on board. The other passengers who had acted as pilots remained on the steamer. The five passengers who were put in the boat had been taken prisoners like the others. The steamer towed them to within about three miles of Partridge Island, and then let them go and kept right on. It was about 8 o'clock when the steamer left the boat. We stayed in the pilot boat until 10 o'clock next morning, when they were brought to the steamer "New England." Captain Willett, with some of the crew, and all of the passengers, got a boat from a ship and came up to Saint John about 4 o'clock in the morning. I was in bodily fear from the time the vessel was taken from us and our crew until I got out of the pilot boat. I am not in the habit of being afraid under ordinary circumstances. The prisoners were on board the steamer when the pilot boat was cast off, and went off in the steamer; they had no place to land. Some of the parties got a stage over the stern, for the purpose of painting out the name of the steamer, and they said afterwards that they did so. They made our men paint the yellow streaks on the smoke pipe black. The "Chesapeake" carried the Stars and Stripes, the American flag. I never knew of her sailing anywhere except to American ports, and from one American port to another. The captain and crew had no control over her, or cargo, after she was taken possession of on Monday morning.

The second engineer might possibly get the apparatus for throwing hot water without help, but I doubt if he could, at all events he could not do it in less than 25 minutes. He would have first to go on deck from his engine-room, then uncoil the hose from the hose box and extend it along the deck, then attach it to the goose neck on deck, then take it down to the engine-room and put the machinery in motion, and after that return on deck to use the hose.

Mr. Gray said all this was immaterial, as if a man under such circumstances as would create the impression that he had the means of throwing hot water immediately threatened to do so, the effect would be precisely the same as if he actually had the means of carrying out such threat.

The witness also said I heard Braine and the chief engineer disputing as to whether the second engineer had fired a pistol shot. Braine said he must have fired the first shot. The engineer denied that he had fired, and said he would lay any wager that he could then, if Braine would let him make the search, find that pistol (it is presumed the pistol Shaffer owned) in the second engineer's room in his bed. I heard afterwards that it was found. I saw blood on the place where they told me Shaffer had fallen. Shaffer was nearly six feet high and a stout able man. He was a very kind, gentlemanly man, and very much liked by the whole crew. He was about 45 years of age, and I often heard him say he was born up North River, in the state of New York.

The only names I remember having heard were those of Braine, Parr, and Collins. All the party seemed to be acting under Braine's command.

Cross-examined by Mr. Gray : From the time the vessel was taken until I left the pilot boat I was in bodily fear. I have not told more than occurred. A great many things happened that I did not see. In coming to Saint John by train I did not get out at a way station for fear of coming to Saint John. I came the whole way in the train. When the vessel was seized, and they told me I was a prisoner to the Confederate States, I knew what they meant. I did not see the Confederate flag run up. I do not know that the North has taken many Southern ships; they may have taken some, but I do not know how many. I did not see the order given to the captain by Braine; heard something about it. The captain told me they had given him their names, but did not tell me they had given him a copy of the order. I was not treated with any unkindness, but the engineer was kept on duty after being wounded, and bleeding from the chin. I was allowed to take all my clothes when leaving the vessel. The cotton we had on board came from New York. Could not say whether it came from the Southern States or from Europe. Cotton is one of the chief productions of the Southern States. Have known cotton to come from Europe. No one was hurt who did not make any resistance to the capture. Did not hear Braine say that he gave orders to his men not to injure anyone, unless in case of resistance. On Monday morning after they had secured possession of the vessel all of our men that I could see were liberated from the irons. One of Braine's men told me that if I would keep quiet, and not attempt to recapture the vessel, they would take care of me. I believe the passengers got all their luggage. I lost nothing, and am not aware that any of the others lost anything, except what the captain spoke of.

Re-examined : They told me they were acting in the name of the Confederate States. The chief engineer was forced to work after being wounded in the chin. I do not know what became of the second engineer's luggage. I did not know he was killed, as I was asleep at the time.

*Evidence of James Johnston.*

January 8, 1864.

James Johnston deposed : Was born in Ireland; have been a resident of the United States 14 years; am not a naturalized citizen of the United States; follow the business of engineer; know the steamer "Chesapeake;" was chief engineer of the steamer "Chesapeake;" have been chief engineer something over a year; have been on board the steamer "Chesapeake" three years last July; was on board the "Chesapeake" on the 4th and 5th December last; this vessel was engaged in carrying passengers and freight between New York and Portland; the steamer had something over 20 passengers on board on the 5th December; I had charge of the engine on the 5th; remained in charge up to 12 o'clock at night; nothing unusual occurred on Saturday night or on Sunday; I had charge of the engine again on Sunday night until 12 o'clock; was waked up between 1 and 2 o'clock on Monday morning by the report of pistols; went from my room on deck and found Mr. Shaffer lying on deck at the engine-room door.

I knew the steamer 14 years ago; she was then called the "Chesapeake;" have known her by the name of the "Totten;" she was at one time rebuilt; she was rebuilt



in New York ; she was afterwards called the " Chesapeake ; " I had known her by the name of the " Chesapeake " before that time ; she is owned by H. B. Cromwell, of N. Y. ; I raised the second engineer up when I found him lying on deck on the Monday morning of the capture ; I called him by name ; he was dead and lying with his feet down the hatchways ; this was between 1 and 2 o'clock ; I saw no blood then, it was quite dark ; saw two spots on his neck which showed blood ; I then went below to the place from which the second engineer came up ; there I got a pistol put to my head by Collins ; I caught him by the arm, and told him to hold on, then a man besides Collins, whom I took to be Brooks, shot at me, the ball taking effect in the chin. [Mr. Gray objected to witness answering the question " who shot the second engineer ? " Brooks made a statement, it appears, to the witness with reference to the shooting of the second engineer, which Mr. Gray objecting, the magistrate would not allow him to tell as not being admissible in evidence.] I went across the deck below and spoke to Wade. Wade did not answer. I was fired at without a word being said to me. I had the ball taken out of my chin two days ago. It was taken out by Dr. Earle, of King's County. The mate, Charles Johnston, was shot in the knee and in the arm. He and I went into the kitchen through a little hatch ; we remained there for half an hour. While there I saw Mr. Shaffer's body going overboard. There were three or four persons engaged in throwing it over. Knew none of them except Braine. The body was thrown over just as it was when lying on deck. The cook came to the kitchen. I asked him where Captain Willett was. He said he was in the cabin. I also asked him what was going on. He said the ship was taken. Robinson, the sailing master, took me to my room to dress, as I had only my night clothes on. I had been asleep, and was awakened by the pistol shot. Robinson had no pistol with him that I saw. I heard two or three pistol shots.

After dressing I went to the cabin and found the captain there in irons ; Robinson was with him ; the mate was there wounded ; Parr was there taking a shot out of Brooks' hand, he then took a shot out of the mate's arm ; Parr then tried to take the shot out of my chin, but could not, as he said it was fast in the chin ; I do not remember to have seen any of these prisoners present ; I had some conversation with Parr ; he told me to keep the cold out of the cut ; he assisted me in wrapping it up ; we had no conversation in reference to the firing of the pistol. I spoke to Captain Willett ; I went with Robinson to the engine-room to see if all was right there ; there was nobody there but Striebeck, the oiler or assistant ; I went there against my choice. Captain Willett asked me if the ship was safe ; I told him she was not, and Robinson overhearing my answer got permission of somebody to take me there, and see if there was any danger of the ship blowing up, as Striebeck was not an engineer, and had been on board the ship but a short time ; did not remain there long ; went back to the cabin after telling the oiler how much steam to carry ; after being in the cabin an hour, went back to the engine-room ; there was some one with me all the time, a guard I mean ; I was taken back on the second time to attend to the engine, and see if the engine was all right ; I was then acting for Mr. Braine ; Braine said he had no engineer, and that I would have to act ; I was not in a fit state to work, on account of the wound in my chin, which was bleeding ; I had to be at the engine all the time, as I had no assistance ; there was some one on guard all this time ; the prisoners were among those who were on guard ; those on guard were armed with revolvers ; I was not threatened. Two by the name of Cox, and two by the name of Moore, Treadwell, Wade, and the three prisoners ; also Lieutenant Parr and Brooks were among those on guard over me ; the guard was changed at stated times. Braine had command of these men ; these are all the names that I can remember ; these men acted under the orders of Braine, Parr, and the sailing master ; as far as I could see Robinson was the sailing master ; was in the engine-room pretty much all the time ; I slept on the locker in the engine-room. I was not on deck much ; did not see much that was going on on deck ; the vessel did not stop till she reached Grand Manan ; she remained there two or three hours. After leaving Grand Manan we sailed towards Saint John, and got below Saint John Harbour about 7 or 8 o'clock on Tuesday evening ; we remained at anchor. We stopped before reaching Saint John, and got Parker on board from a pilot boat ; he took charge over Braine ; there was another gentleman, Mr. McDonald, came on board with Parker ; he was introduced to me by Parr as Mr. McDonald ; Mr. McDonald told me to content myself for a little while, as he would only keep me for 48 hours ; he appeared to be concerned in the affair ; told him I wished to get home as my folks would be uneasy ; he asked for my address, and he said he would send a despatch to my wife, and inform her that I was well and would be treated well ; he forgot his kind intentions, however, as the despatch was not

sent. McDonald went ashore here. I saw McDonald a few days ago; he came from Halifax to the Bend with me; I did not request him to come; perhaps he came to see that I got through safely. We remained off Partridge Island in the steamer from three to five hours; a boat went ashore, in which were Parker and Braine; I do not know any of the others, or what they went ashore for; they came back to the ship, and we started as soon as we could get steam up after they came aboard; I think McKinney went ashore with them. We did not take in any coal here; we left here about 2 o'clock next morning under steam; we got into Shelburne in the first place; got there about 9 o'clock on Thursday night. Captain Parker had charge of the vessel on the way to Shelburne; I was not allowed to go ashore, neither was any of the crew. There were four others of our crew taken away in the vessel; their names were Striebeck, Connors, Tracy, Murphy. I had charge of the engine; I slept a little at one time; I slept three hours in the cabin. We had a very heavy gale of wind, also snow on the passage, which commenced on Thursday morning. We lay at anchor in the harbour; we lay there all Thursday night. We took in coal and wood there from a schooner on Thursday night. Parker told me there were 10 tons of coal and two cords of wood. Here we discharged a large quantity of freight, including flour, sugar, tobacco, and port wine. It was put on board a schooner. I do not know how much wine was put ashore. The wine was put up in quarter pipes. The wine was distributed about the vessel. I got some. Captain Parker said that Kenney, a man living there, had bought a thousand dollars worth of the cargo. Braine came back there in the daytime; cannot say on what day. We lay there four or five days. We were there on Sunday. Do not know on what day we sailed. Braine left the vessel again while there. He took a trunk with him; I heard there was jewelry in it. Braine did not come back there again. Got no additional men or coals at La Have. We got some wood. Parr told me that he was going away for a day or two. He would return and bring Braine back, when he would endeavour to get the captain to liberate me, as it was too bad to keep me confined to the ship, wounded as I was and away from my family. Parr also said Braine had acted wrong in running off with a sum of \$400.

(Mr. Gray objected to all evidence as to some statements made by Parr, and quoted from Roscoe's evidence in support of his objections. The magistrate ruled in his favour.) Witness resumed: Parr went away; I do not know where. We left that evening; I do not know the date. We got some wood there. We left La Have and came to the mouth of the river, towing a schooner of about 50 tons, and loaded with part of the cargo of the "Chesapeake." I cannot say what kind of a load we gave her as it was at night, but it was a pretty good load. I did not hear Parker say what he got for this. We got some wood from the schooner. We remained at the mouth of the river and then proceeded to Sambro, about 20 miles from Halifax. Our coals lasted until we got there. Got no additional crew at La Have. Captain Parker went from Sambro to Halifax for coal, but took no part of the cargo with him. He returned with a schooner load of coal, two engineers, and two firemen. Parr had not returned. We commenced taking in the coal about 2 o'clock in the morning. I got up and spoke to Parker; he told me about the men he had got, and asked me to show the engineers the machinery. I told him I would after daylight. After that I was in my state room getting ready to leave, Parker having told me he was done with me, when the pilot (Flinn) reported to Parker that there was a gunboat in the harbour. Parker went on deck, and seeing her spoke to his new engineer about getting steam on. (This place they call Mud Cove.)

The engineer told Parker his men were not in order to get steam on. Parker then told me to scuttle the ship, but I told him I did not know how. He said I could cut a pipe, and I said we had no pipes that I could cut. Parker left the cabin then. I carried my clothes on deck, and found him and his crew leaving the vessel, and very good time they made. The three prisoners were among them. I then got an American colour out of the wheel house, and one of the firemen to run it up Union down. The gunboat came alongside and boarded us. She was commanded by Lieutenant Nichols. There were none on board the "Chesapeake" then but myself and my three firemen, the two new engineers, who were left behind, and one oilman. There was no steam up then. Nichols asked me who was on board, and I told him. We tried to get up steam, but we had not coal enough, and no oil on board.

About an hour and a half after this we left, and proceeded to Halifax in company with the "Ella" and "Annie." The "Dacotah" was behind us. I stayed in Halifax until Monday last. Parker, Braine, and Parr had charge of the "Chesapeake" from the time she was captured until they left her at Sambro. Captain Willett and his crew had no control over her. I did not act of my own free will, but under orders from these



people. I went to the second engineer's room in company with Parr and Striebeck, and found a pistol there, which I handed to Parr. He examined it and said it had not been used. In the second engineer's drawer I found the pistol.

The second engineer's room was on the deck above where he attended the engine, and the same deck on which I found him dead. I hired him about two years ago, and have never known him to carry a pistol. I would have known it if he had done so. There was no means of putting boiling water on deck, nor were there at any time. There was a force pump to throw cold water in case of fire. I saw these prisoners every day, from the time the vessel was captured until they left her at Sambro. They all carried revolvers. I do not know what position Collins occupied.

Cross-examined by Mr. Weldon : When Brooks got to the cabin he was wounded in the left hand. Parr cut the ball out. I heard nothing said about the engineer shooting him. I found the second engineer dead at the top of the gangway; his duty was below. I went down and saw Brooks, who flashed a pistol within about two feet of me. The ball struck me in the hollow of the chin; did not knock any teeth out; but was bedded in the bone. I had it taken out the day before yesterday from the outside. After being shot I went into the kitchen through a hatch used as a dumb-waiter. This may have been cowardly, but I could not help it. I remained there about half an hour, when I was taken to the cabin, and Parr cut the wound, but could not get the shot out. He then dressed it, and told me to keep the cold out of it. He took the ball out of the mate's arm. I did not hear the Confederate States mentioned at all, nor did I hear Braine say to anyone that they were acting in the name of the Confederate States. They used a Secesh flag in Shelburne. I cannot describe it; it did not seem right to me. Cannot tell how many colours were in it. I could not describe four weeks from now a "rag" that I had seen to day. It was not the Stars and Stripes.

Parr did not tell me they had taken the "Chesapeake" for the Confederate States; but said that he and Braine had travelled in her about a month before for the purpose of taking her. He also told me he had been in the Southern army, and was a released prisoner; but did not say what part of the Southern States he came from. He treated me very civilly, said Parker had not fulfilled his word, and that he would try and get me away. They did not get any new engineers at Shelburne; they would have to "make them" there. I was allowed to go on deck alone occasionally, and took my meals in the cabin. When the vessel was first taken Braine told me he had no engineer, and I worked the vessel to Grand Manan. Parker then came on board, told me he would have to keep me a little while, and asked me how much money I wanted. I said not to mind money, I would run the ship if I had to do it. I suppose Braine acted under Parker after the latter came on board. There was a guard in the engine-room, in the fire-room, and on deck all the time. Parker said Shelburne was his native place; did not say he had been in the Southern States. I had never seen him before. We put into Shelburne, La Have, and Sambro, and were about four miles inside Sambro, and about half a mile from the shore, when the "Ella and Annie" took us. When Parker and his party left they took one boat with them. Wade must have gone on board the schooner, as he was found there by some of the crew of the "Ella and Annie." I was left in charge of the "Chesapeake." The two Halifax engineers and Wade were the only persons taken on board the "Ella and Annie." The "Dacotah" lay off the harbour, and after speaking her we proceeded to Halifax, having got orders to that effect from her commander. I was kept only until they got engineers. I did not expect any money, nor would I have taken any were it offered.

Re-examined by Mr. Wetmore: The watch in the engine-room and fire-room were armed; I don't know whether the watch on deck was armed.

January 11th, 1864.

Mr. Wetmore put in evidence certified copies of the following Acts of Congress :—

|                                                                |                  |     |             |
|----------------------------------------------------------------|------------------|-----|-------------|
| Act of Congress 1819, cap. 75., Statutes at Large, 3 vol. 514. |                  |     |             |
| Do.                                                            | 1820, cap. 113., | do. | id. 600.    |
| Do.                                                            | 1823, cap. 7.,   | do. | id. 721.    |
| Do.                                                            | 1823, cap. 72.,  | do. | id. 789.    |
| Do.                                                            | 1825, cap. 87.,  | do. | 4 vol.      |
| Do.                                                            | 1847, cap. 51.,  | do. | 9 vol. 174. |

Also proclamation of President Lincoln, dated April 19th, 1861.

*Evidence of Charles Watters.*

Charles Watters was called and testified as follows: I reside in Carleton; have resided there 12 years; know the prisoners Seely and McKinney; had no conversation

with Seely or McKinney on the subject of the capture of the "Chesapeake;" had heard a good many speak about it in their presence; I heard their conversation in Lower Cove, in the city of Saint John; McKinney was present; the two Coxes were present; do not know the names of the streets in Lower Cove; do not know in whose house this conversation took place; after going down Charlotte Street, would turn to the left in order to reach the house in which the conversation took place; it was the next street to the last street which runs east and west [procuring a plan of the city, the witness pointed out Main Street as the one on which the house was situated where these meetings and conversations took place]; the house was on the right side of the street; it was a workshop; it was reached through a yard; saw the captain there; think his name was Braine; heard conversations there; the captain was not present; his name was Parker as I since heard; he was a middling tall man; the captain said he wanted a crew of 20 men to go to New York to capture a vessel; we were all to have a share; do not know how much each man was to receive; did not hear anything about payment for the service; we were to have our passage paid to New York; Parr was to pay the passage; the prisoners were present at one of the meetings; there were two meetings; did not hear anybody say they would go; the prisoners were present at the second meeting; there were very few of the boys present at the first meeting; the captain appointed the second meeting; never saw Collins before to-day. Have had no conversation with McKinney about the affair; had no conversation with Seely about it; I went over to Carleton in the same boat with Seely; I was present when the American boat went off and Seely and McKinney were there. About a week after the last meeting I heard that the "Chesapeake" was captured; it was asked at the last meeting by the captain if those present would go; I cannot say that I heard anyone assent; I was not present at the first meeting; I saw the prisoners Seely and McKinney the same night that the last meeting took place, before the meeting; I do not know how many meetings were held; I had a conversation with McKinney and Seely on the road to the meeting, when the prisoners said they would go to the meeting; the two Coxes and a man named George Robinson were with us; Robinson asked the boys to go; they asked where they were going to, and he stated they would find out when they got there; when I speak of "they" I mean the prisoners and the others; they asked what they were going for; Robinson said they were going to see Braine, who was holding a meeting for the captain; couldn't say what was said on the way; Robinson called at the Lawrence Hotel and got Captain Parker, and we all went to the place of meeting; I heard sometime before the meeting that this man wanted to get a crew for the purpose of taking a steamer; those who intended to go were to go the next morning. I was present when the American boat left, and saw McKinney and Seely there; Seely was brought up in Carleton; I did not intend to go; I went to the boat to see who was going; of those men who were at the meeting I only saw McKinney and Seely; they were on the upper deck of the boat; did not know where they were going; I bid the time of day to them; I was there about a quarter to 8 o'clock; I left the wharf before the boat left; I heard the steamboat bell ring before I reached the wharf; I was at the head of the wharf when the fastenings were cast off; I saw the prisoners about five minutes before this.

Cross-examined by Mr. Gray: It was stated at the meeting by Captain Parker that they were going on behalf of the Confederate States to take this vessel; I think that it was stated at the meeting that this prize was to be divided among the crew by the Confederate Government; Captain Parker stated that he had a commission from the Confederate Government; the captain produced a paper which purported to be a commission from the Confederate Government; the paper was read over; I did not hear what the paper contained; it commenced, as near as I can remember, "Jefferson Davis, President of the Confederate States of America." [Mr. Gray here produced a document which he refused to allow Mr. Wetmore to see. It was understood, however, that it was the order of Jefferson Davis to Captain Parker to go privateering.] I think the intention was expressed at the meeting that the vessel was to be taken for the Confederate States, or else they would not have gone; at the time that I heard that Captain Parker and Lieutenant Braine wanted a crew, I also heard that they were officers in the Confederate service; I heard at the same time that they wanted to raise this crew for the Confederate service for the purpose of taking this vessel; it was understood that this crew when raised was to be in the Confederate service. I did not hear it said that Parr had been an officer with General Morgan; I was not sufficiently close to see the paper that Captain Parker read, so as to be able to identify it; I did not see the mark upon it; I was not sufficiently near the paper to see it so distinctly that if it was now put into my hands I could identify it; did not see Braine there the first night; he was styled lieutenant; did not remember that Captain Parker stated that he was captain of the privateer



"Retribution;" went to Lawrence Hotel for Captain Parker, then went down to the place of meeting.

Re-examined by Mr. Wetmore: I told you all you asked me. The vessel was to be a Confederate prize. I do not know what share we were to have. I think the steamer was to be brought to Grand Manan to land her passengers. There was some talk at the meeting about taking the vessel to Nova Scotia. [It was talked among the men that the vessel was to be taken to Nova Scotia.] The question was asked if the vessel was to be taken there. I did not hear it asked, and I did not hear the answer. I did not hear what the vessel was going to Nova Scotia for. The men were to have a share. I do not know what they were to have a share of. I can't say that they were to have a share of the vessel and cargo. I did not hear when or where the division was to be made. I did not hear who was to make the division. I heard from Robinson that Parker and Braine were officers in the Confederate service. I did not intend to go with the men. I went to the meetings to see and hear what was going on. It was stated at one of the meetings that the men would be protected.

To Mr. Gray: It was stated that the men would be protected by the Confederate Government. It might have been intended that the vessel should go to Nova Scotia for coal.

January 21st, 1864.

Mr. Wetmore put in evidence:—

Certified copy of coasting license granted to the steamer "Chesapeake," under certificate of H. Barney, Esq., collector at New York.

Certified copy of certificate of enrollment of the "Chesapeake" at New York.

The evidence for the prosecution closed.

At the close of the evidence for the prosecution the depositions were read over to the prisoners and being asked, with the usual caution, what they had to say, Collins replied as follows:—

"I am not guilty of any of the charges alleged, and in any and every act done by me, in any way connected with the taking and capture of the "Chesapeake," I say that act was done under the authority and in the service of the Confederate States of America, Jefferson Davis, President, as I then believed, and now believe. And I utterly deny that I am guilty of either piracy, murder, or robbery on the high seas, or of any crime or offence whatever, and I positively assert that I never contemplated piracy, murder, or robbery, or any other crime or offence, and do not believe I have committed any."

(Signed) D. COLLINS.

The other two prisoners made and signed similar statements.

Thursday, 28th January 1864.

The following witnesses were then called for the defence:

*Evidence of John Ring.*

John Ring: I live in Carleton, lived there all my life. I know two of the prisoners, McKinney and Seely. I know Charles Watters. I was present at the meeting spoken of by Watters, about the "Chesapeake;" Watters was there; McKinney and Seely were there. It was proposed to enter into the Confederate service at that meeting. I saw Braine there, a man they called Braine. I saw a man called the captain; did not see Parr. I was at both meetings; some man showed a paper which the captain said was his authority. I would know that paper if I saw it; I know it by a large seal not quite at the corner; a man's head and shoulders. There is another seal on it, on the right-hand side, looking like a blot; I minded it when the man read it. I saw it afterwards in Mr. Gray's hands. Jefferson Davis' name was at the bottom of it. I went up and saw what it was he had done reading. This is the paper which was produced at the meeting. I swear this is the paper the man read at the meeting. I made a mistake about the head and shoulders of the seal. He had just done reading as I went in. This is the identical paper.\*

Mr. Gray offers the paper in evidence as part of what took place at the meeting.

The magistrate declines to receive it until it is proved genuine.

Cross-examined: The seal on the right hand looked like a small blot. I cannot say on which side it was, inside or outside.

*Evidence of James Trecartin.*

James Trecartin: I live in Carleton. I was present at the last meeting. Ring was there. I think Watters was there. It was proposed to enter into the service of the

Confederate States. I was introduced to Captain Parker. I heard a man called Braine was there. I asked the captain what was his authority, and he pointed to a gentleman and said he will show you my authority, he produced an envelope. He took a paper out, and I saw the red spot on the back. He then read it out. I saw the large seal afterwards on it. It commenced "Jefferson Davis, President of the Confederate States of America." It was signed on the right-hand side "Jefferson Davis."

Cross-examined: It was a round red mark. "Jefferson Davis" was written out in full; there was nothing after it. I saw the paper once at Mr. Gray's; do not recollect the day. I think it was Thursday, 7th inst., in the evening. I gave the description of the paper to Mr. Gray, and then he showed me the paper. Mr. Gray and Mr. Weldon were there. I swear this is the paper from the mark shown; the small red seal of the paper. It was a red seal. It was a diamond stamp. I could not say whose name was there.

A certified copy of the commission establishing a court in the province of New Brunswick, for the trial of piracy and other offences committed on the high seas, passed at Westminster the 11th day of April 1829, by writ of privy seal; put in evidence and read.

January 30th, 1864.

Certified copies of the letters of the American consul to Mr. Tilley,<sup>†</sup> and affidavit accompanying them; put in and read.

#### *Evidence of Luke P. Blackburn.*

Dr. Luke P. Blackburn being sworn, said: I am a resident of the Confederate States. Reside in Natchez, Mississippi. I was appointed medical director of the state of Mississippi in January 1863. I left the Confederate States on 16th July last. I am a native of the state of Kentucky. Have resided in the Southern States since March 1846, and have been connected with the armies since the difficulty between North and South commenced. Am intimately acquainted with Jefferson Davis, President of the Confederate States. Know his handwriting; have corresponded with him. Know the provisional seal of the Confederate States. A new seal and a new flag were adopted in May last. Am acquainted with Mr. Benjamin, who in October 1862 was Secretary of State. The Provisional Government was established in April 1861. Mr. Benjamin acted as Secretary of War for only a short period; he is now Attorney General. [Mr. Gray here placed in the witness' hand Captain Parker's authority,\* and asked him to identify the signatures and seal.] Witness: The signature is that of Jefferson Davis, and the seal is that of the Confederacy. I think that is the signature of Mr. Benjamin. The seat of Government was removed to Richmond in the fall of 1861. A very terrible war is now going on between the United States and the Confederate States. Prisoners are exchanged. We are recognised as belligerents; sometimes this rule is infringed by the North. I have just arrived from Montreal. Left that city last Saturday. Charleston, South Carolina, is in the Confederate States, and is likely to remain so. Confederate Government issue letters of marque and have vessels of war too. They issued letters of marque in 1862. The South has a small navy but a very efficient one. I know the South has a vessel of war called the "Alabama." In 1862, the states composing the Confederacy were: Texas, Louisiana, Arkansas, Missouri, Kentucky, Tennessee, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia.

#### *Evidence of Alonzo G. Coleman.*

Alonzo G. Coleman, sworn: I am a resident of the Confederate States. Was born and brought up there. Am a native of Alabama. Previous to the war my father had large estates in Alabama. Have been in the Confederate service since May 1862. My rank is that of a private. [There was an objection raised to Mr. Gray asking witness whether according to the practice of the Confederate service officers commissioned for any particular duty have not power to delegate authority and appoint others under them to aid in carrying out that duty? The magistrate allowed the answer to be given.] I have known a captain to delegate authority to subordinates under him to do a particular act. I have known it to be done. They have authority to do this. Though a private I have myself been appointed by my captain to act as lieutenant to do a particular duty. The acts spoken of were recognised by our commanding officers. I know of such acts being a recognised part of our service. I mean by commanding officers, not captains

\* Vide Appendix A. † Vide Appendix G.



but generals in command. In cases of parties so acting being taken prisoners by the Federal authorities, they are regarded as prisoners of war. The southern ports are looked upon as blockaded. I knew nothing of the "Chesapeake" matter until brought here.

Cross-examined by Mr. Tuck : I was not an officer, but was regarded as an officer when placed in command of a party. I only received private's pay. If a lieutenant places a private in command of a party to act for him he is privileged to act as lieutenant commanding.

*Evidence of Captain Thomas Herbert Davis.*

Captain Thomas Herbert Davis, sworn : I am a native of Virginia. Am in Confederate service. Am a captain. I went into the service in South Carolina at Fort Moultrie, when the "Star of the West" came up. I went in as a private, and have gone up through all the grades to a captain. Have been in active service. Have been in Lee's army. Have been with it until within the last six months, during which time I was a prisoner at Johnson's Island. Have served under Johnson, Beauregard, and Lee. My division general is Pickett. I belong to Longstreet's corps. I have been in every battle except the seven days' battle at Richmond, and the battle of Chancellorsville. I was wounded at Seven Points. Was taken prisoner at Gettysburg, and sent to Johnson's Island, from which place I escaped on New Year's night. That was the coldest night I felt for 12 years. I rode 15 miles, and walked some 120. I borrowed the horses I rode, or rather I took them while the farmers were asleep. According to the practice of our service, officers commissioned to do a particular duty have power to authorise and appoint others to do that duty, or aid in carrying it out ; I have exercised it myself. Such acts have always been recognised by my general officer, and I suppose by the Government ; to my knowledge no objection was ever made. It is no novel thing for these appointments to be made. When the persons so appointed to act have been taken prisoners by the Federal authorities they have been regarded as prisoners of war. I was so treated myself. My field officer and two ranking captains were shot at Gettysburg. After that until wounded I commanded the regiment. I was then unable to get off the field and was taken as a prisoner of war by the Yankees, and transferred to Johnson's Island. A person appointed by a captain to do a particular duty, if taken, is regarded as a prisoner of war. I believe this to be the recognized rule of the service. Did not know Colcock, collector at Charleston.

Cross-examined by Mr. Wetmore : If I wanted a person to do a particular duty, and was deficient in officers, I should appoint some person of less rank for the time being ; he would hold the higher rank in the discharge of that particular duty. In our volunteer service officers and men frequently mess together. I don't know that in any exchange of prisoners a private is given for an officer. I know, however, that the Federals hold 400 persons at Johnson's Island, who prior to the new organization of the regiments held commissions, but afterwards, having been voted out, occupied the position of private citizens, with a view to their exchange for officers. I could make an orderly sergeant a captain to do a particular duty in the event of there being no lieutenant. The person appointed to discharge a particular duty in this way would be respected and obeyed by the men. These appointments are not officially notified to the general in command, except by the regular morning's reports. If a general came along and heard of the appointment of a subaltern in the manner described, he would recognize it. Never heard of Braine except in connection with the "Chesapeake" affair. Don't recollect that name among the army officers. There are so many officers in the service that it is impossible to remember the names of them all.

*Evidence of E. Tom Osborne.*

Ephraim Tom Osborne, sworn : I belong to Kentucky. Am in the Confederate service. Have been serving with General John H. Morgan since he was a captain. The Yankees call him a guerilla. Have been in active service two years. Was on detached service the rest of the time. Was taken prisoner on the 19th July last. Escaped from camp Douglas on the 2nd December last. General Morgan escaped from Columbus, Ohio, previously. According to the practice of our service, officers commissioned to a particular post, or to do a particular duty, have power to delegate their authority to others ; I have known it to be the case. One year ago this winter I saw it done almost every day. The reports of such appointments are made to the colonel and from him to his superior, and so on until it goes to headquarters. [Mr. Wetmore here observed that these reports were most likely going on yet, to which the witness observed that they might stop when they reached Richmond. The quiet yet cutting way in which this retort was given caused some

merriment in Court.] When persons so appointed have been taken prisoners they have been treated as prisoners of war. I arrived here this morning. All of our party arrived this morning. I have seen some account of the "Chesapeake" affair in the papers.

*Evidence of Eben Locke.*

Eben Locke, sworn: Am a Nova Scotian. Am a sea-faring man. Am a captain. Shelburne, N.S., is my native place. Have a brother called Vernon G. Locke, who goes by the name of Captain Parker. He left Nova Scotia, about 20 years ago, when a boy. He has been living in the States ever since. Believe his family live in Fayetteville, N.C. I have been in Wilmington, N.C. Was in Nassau this summer. Saw there a Confederate vessel called the "Retribution." She was called a privateer. She had the Confederate flag flying. Saw there my brother in command of the "Retribution," passing under the name of Captain John Parker. He was received and recognized as captain. He showed me his commission. I asked him to do so. I asked him either for his commission or letters of marque. The paper placed in my hand is the one he showed me at that time. It is in the same state now as it was then. I remember the writing on the back distinctly. My brother was on board of my vessel at Nassau. Had not seen him for 20 years. In consequence of what I heard at Nassau I found that Captain Parker was my brother. Next saw him at Sambro, N.S. He was then in command of the "Chesapeake." He was the same Captain Parker, my brother, whom I saw at Nassau. I saw this same commission in his own hand at Halifax. How it got into your hands I don't know.

Cross-examined by Mr. Tuck: I read part of the paper. Read enough of it to know that that is the same paper. Don't know why my brother changed his name. Don't know that my brother sailed out of Boston. Know that he sailed out of New York, and out of Cape Cod. Don't know how long since he sailed out. Never saw the "Chesapeake." I went down from Halifax to Sambro; half an hour before I arrived she had left. Never changed my name. Stayed two hours at Sambro. My brother remained till I went to Halifax. Got a carriage and brought my brother there; then went home, 60 miles east of Halifax. Don't know where my brother now is. Don't know anything about Braine or Parr. Have not heard of Parker since leaving Halifax. Got none of the cargo at Sambro, nor did any of my family. Did not see any of the cargo belonging to the "Chesapeake." My brother did not tell me of selling parts of the cargo all along the shore.

Re-examined by Mr. Gray: My brother is a Nova Scotian by birth. He told me his family was at Fayetteville. Some questions put by the learned counsel as to the conversation he had with his brother were objected to.

The Queen's proclamation of the 13th May 1861, as to the observance of neutrality pending the hostilities between the United States and the Confederate States of America, was put in evidence by Mr. Gray.

February 10th, 1864.

John Driscoll, being acquainted with Captain Parker's handwriting, proves the signature to order to Braine,\* and also to commission to Collins.†

W. C. Watson produced the register of the "Kate Hale," a Confederate vessel, registered in Charleston, South Carolina, and by comparison proves the handwriting of "W. F. Colcock," collector of Charleston, to the endorsement on the letters of marque.‡

The evidence for the defence here closed.

February 15th, 1864.

Mr. Gray moved for the discharge of the prisoners, on a variety of grounds; but as they appear in the argument before his honour Mr. Justice Ritchie, together with the authorities cited in support of them, they are omitted, except the following authorities which were not cited by the counsel before the judge.

2 Wheaton, 76. 10 Wheaton, 306. L'Aimable, 6. Wheaton, 1. Brown v. U.S. 8 Cranch, 132. "The Hiawatha," Appendix to Wheaton, Int. Law. (Lawrence) 16, 24. U.S. v. Klintock. 5 Wheaton, 152. U.S. v. Smith, Id. 154. The "Mariana Flora," 11 Wheaton. "The Apollon," 6 Curtis (Condensed Rep.), 92. The "Divina Pastora," 4 Wheaton, 52. "L. Invincible," 1 Wheat, 238. The "Savannah" crew tried in Philadelphia in 1861. The "Saladin," before court in Halifax in 1843.

\* Vide Appendix H. † Vide Appendix I. ‡ Vide Appendix G.



After hearing Mr. Gray and Mr. Weldon, in support of these objections, and Mr. Wetmore, on the other side, the police magistrate adjourned to

February 24th, 1864.

When his worship gave the following judgment:—

After recapitulating the evidence, he proceeded as follows:—

In giving judgment in the case I shall first consider the effect of the evidence given on behalf of the prosecution, and what it discloses. 1st. It discloses the fact that the prisoners and a number of persons met together in Lower Cove, in the city of Saint John, without authority from this or any other Government, and came to the conclusion to proceed to New York and take a steamer, the design being that they were to take passage on board of the steamer and capture her on her voyage—the work, I say, of a coward and a villian, which ought to be considered as against all law—human or divine. This was accomplished, and the vessel seized, as appears by the evidence.

Now upon examination of the law between a master mariner and his passengers it will be found that the grave responsibility of the person to whose skill and conduct life and property are entrusted on the Ocean, and the situations of unforeseen emergency in which he may be compelled to exert himself for the passengers preservation, render it necessary that he should be invested with large, and, for the time at least, unfettered authority. Obedience to this authority, in all matters within its scope, is a duty which should be cheerfully discharged by every passenger on board the ship. Whatever is necessary for the security of the vessel, the discipline of the crew, the safety of all on board, the master may require not only of the ship's company, who have expressly contracted to obey him, but of those also whom he has engaged to carry to their destination, on the implied condition of their submission to his rule. Therefore a passenger who is found on board in time of danger is bound, at the master's call, to do works of necessity in defence of the ship if attacked, and for the preservation of the lives of all on board.

Now I shall consider the effect of the evidence, and what it discloses, produced on behalf of the prisoners, touching the seizure of the "Chesapeake."

1st. It appeared that a most terrible civil war was existing between the Federal States and the revolted Confederate States, and that they have been recognized by Great Britain as belligerents.

2nd. That the authority to seize and take the "Chesapeake" rests entirely on the authority and position which John Parker, alias Vernon G. Locke, held under the authority of the Confederate States. Now what was his position and what authority had he from the Confederate States to authorise him to commission persons in New Brunswick to commit this Act? Does the talk at the meetings at Lower Cove about the Confederate service and officers of the Confederate service, and the presenting the letters of marque give Parker, alias Locke, any power. I apprehend not. From the fact of Vernon G. Locke having possessed himself of the letters of marque at Nassau, a British port, constituting the vessel "Retribution" a private, not a public, armed vessel, in the Confederate service, whereof Thomas B. Power was commander, and there appearing on the back thereof an endorsement transferring the command of the "Retribution" to John Parker, and he, Locke, having assumed the name of John Parker, and there being no authority shown for making this transfer, or that Locke was the person to whom it was in fact made, does not, I apprehend, give Locke the power on behalf of the Confederate States, to plan in the province of New Brunswick the expedition, and create at will officers for the Confederate service during the pendency of the war.

Now this brings me to the questions which I have to decide. 1st. There are the proceedings had before his excellency, and his warrant in this matter. I decide that the jurisdiction given to his excellency under the Imperial Act is not a subject matter for me to inquire into.

2nd. As to my own jurisdiction. I hold, that under the 10th section of the treaty and the Imperial Act, I have jurisdiction in cases of piracy, and that this jurisdiction extends to piracy committed on board of American vessels on the high seas, as well as for piracy committed against the municipal laws of the United States. I have carefully examined the authorities cited upon this latter point; namely, piracy by the law of nations, and piracy by the municipal law of the States. I find it stated in a note in "Wheaton" that in the construction of the British Treaty of Extradition a crime committed at sea on board of an American vessel has been considered the same as if committed in the territory of the United States.

"Vattel" says that the domain of a nation extends to all its just possessions, and by its possessions we are not to understand its territories only, but all the rights (droits)

it enjoys. He also considers the vessels of a nation on the high seas a portion of its territories.

The other points raised I have carefully considered, and have endeavoured to search out a justification for the act perpetrated by the prisoners at the bar and the other persons charged, and I must confess I can find no justification. Taking the whole circumstances of the capture of the "*Chesapeake*" it was not *jure belli*, but she was seized and carried away *anima furandi*. It was not a belligerent capture, but a robbery on the high seas. Therefore I consider, 1st. That this is an act of piracy; 2nd. That it is justiciable by the Federal judiciary; and therefore, 3rd. I consider this to be rightfully a case of extradition.

It now only remains for me to declare to you David Collins, and to you James McKinney, and to you Linus Seely, that I shall commit you on the charge of piracy to the common gaol of the city and county of Saint John, there to remain until you are handed over to the United States authorities, pursuant to the requisition made to his excellency.

The police magistrate having issued a warrant of commitment,\* in accordance with his decision, the prisoners were committed to the gaol of the city of Saint John, and an application being at once made to his honour Mr. Justice Ritchie, he issued an order in the nature of a habeas corpus under 19 Vict. cap. 42., returnable before him at the judge's chambers, in the Law Society's Rooms, in Saint John, on the 26th February.

February 26th, 1864.

James A. Harding, Esq., high sheriff of the city and county of Saint John, attended before Judge Ritchie, and made his return to the order of the judge.†

The order and return having been filed and read,

Gray, Q.C., applied on the part of the prisoners, for an order to the police magistrate to produce the evidence and proceedings taken before him on which the warrant for the commitment of the prisoners was issued. He referred to Act 6 W. 4. c. 36. "For more effectually securing the liberty of the subject by enforcing the execution of writs of habeas corpus;" under which the judge before whom the return was made was authorised to examine into the truth of the facts set forth in the return, even when that was sufficient, and the Act 19 Vict. c. 42. "For better securing the liberty of the subject," under which the order in this case had been issued, which gave the judge enlarged powers, enacting (s. 3.), that "Upon return to such order, the judge may proceed to examine into and decide upon the legality of the imprisonment, and make such order, require such verification, and direct such notices or further returns in respect thereof as he may deem necessary or proper for the purposes of justice, and may, and he is hereby empowered by order in writing signed as aforesaid, to require the immediate discharge from prison, or may direct the bailment of such prisoner in such manner and for such purpose, and with the like effect and proceeding, as is now allowed upon habeas corpus."

Ritchie, J.: I think some facts should be shown on affidavit to authorise my making the order asked for. I have no judicial knowledge of the proceedings before the magistrate.

Gray, Q.C., referred to the language of the Act giving the judge the power to order the evidence to be brought before him, even if the warrant of commitment were sufficient. The Act should have a construction in favour of liberty. There was a distinction between applications before and after indictment. Where an indictment has been found the court cannot go behind it. But on a commitment before indictment it is otherwise. *People v. Martin*, 1 Parker, Crim. R. 187.

Ritchie, J.: I have no doubt I may make the order, but do not think I ought to do so until some reasons are brought before me on affidavit I must presume everything to be correct.

Gray, Q.C., stated he would obtain an affidavit if required; none could however be made before the return to the order was filed, and the only reason for making the present application was to save unnecessary delay. The police magistrate had received notice to produce the papers required.

On the 27th February,

Gray, Q.C., applied for an order to the police magistrate to produce the proceedings and depositions taken in this case, on an affidavit of David Collins one of the prisoners, stating that they were confined by virtue of a warrant issued by the police magistrate of Saint John, on a charge of piracy, that the warrant was founded on certain depositions taken before the said magistrate, by which it appeared that the offence, if any, was committed on the high seas, and without the jurisdiction of this province and the United

\* Vide Appendix F.

† Vide Appendix K.



States, that no charge had been made or proceedings commenced against any of the prisoners for piracy or otherwise, in any court of the United States, that they were acting under due authority from the Confederate States of America, and not pirates, but belligerents acting against the United States *jure belli*, that no requisition by the proper authorities in the United States had been made to justify the proceedings taken against the prisoners, and also stating that the facts set out in the warrant of commitment were not supported by the evidence adduced.

He cited Archibold's Criminal Practice by Waterman, v. 1, pages 220, 222, 223. People v. Martin, 1 Parker's Crim. R. 187, id. 1.

Wetmore, Q.C., for the prosecution, objected that this proceeding took place under the Imperial statute passed to give effect to the Ashburton Treaty, and not a habeas corpus Act.

Ritchie, J.: I am proceeding not under a habeas corpus nor the Imperial statute referred to, but under an Act giving me like powers upon an order issued under the Act as in a proceeding upon habeas corpus.

I have no doubt this is a proceeding which peculiarly calls for the interposition of the highest tribunals of the land. It is the duty of Her Majesty's justices to see that the liberty of her subjects is preserved. If the court will interfere in the case of persons committed for trial in this country, *à fortiori*, the court will interfere where the parties are to be sent abroad. The only English case I am aware of under the extradition statutes is one which arose under that passed to carry out the treaty with France (in re Besset, 6 Q. B. 481), where the court held that their powers being statutory were to have a strict construction. I cannot doubt I have power to review the proceedings before the magistrate, and if there was no ground for those proceedings, or the magistrate has fallen into any error, either in form or substance, and I should be of opinion the parties are illegally imprisoned, to discharge them, I think I should be failing in one of the most important of my duties did I not order not only the warrant, but also, as an affidavit has been made before me that the evidence did not warrant the conclusion the magistrate arrived at, the depositions and proceedings before him to be brought up; and I consider it my duty, in the words of the Act to "examine into and decide upon the legality of the imprisonment," and, the return being questioned, "to require such verification" as I may deem necessary, and, to enable me so to examine and decide I think I ought to "direct the further returns" asked for to be made.

The depositions being then handed in by Mr. Gilbert, and being read, including the charge contained in the heading of the depositions,\* the case was then fully argued before the learned judge on Saturday the 27th February, and the following Monday, Tuesday, and Wednesday.

Gray, Q.C., and C. W. Weldon for the prisoners.

The proceedings have taken place under the Imperial Act 6 & 7 Vict. c. 76. (2 R. S. 429), passed to give effect to the Ashburton Treaty. The treaty is entitled "A treaty to settle and define the boundaries, &c., and for the giving up of criminals fugitives from justice in certain cases," and the 10th article provides for the extradition of persons charged with the commission of the crimes specified, within the jurisdiction of either country, and seeking an asylum, or being found within the territories of the other. But the treaty could give no power in itself to any officers in this province to act in such cases. Their powers must come from the statute and from it alone.

And since a man who has committed no crime in the country where he is is entitled to his freedom, and a man who has committed a crime against the laws of that country is entitled to be tried by its courts; a statute such as this being in derogation of these common law rights must be construed strictly (in re Besset, 6 Q. B. 481). The statute provides (s. 1) that if requisition shall be made "by the authority of the said United States" for the delivery of any person "charged" with an offence committed "within the jurisdiction of the United States," and found within the territories of Her Majesty, the Lieutenant-Governor shall signify that *such requisition* has been *so made*, and require "all Justices of the Peace and other Magistrates, and officers of Justice within their several jurisdictions," to aid in apprehending the persons so accused; and that thereupon "any Justice of the Peace or other person having power to commit for trial persons accused of crimes against the laws of that part of Her Majesty's dominions in which such supposed offender may be found," may examine into the charge and commit the accused person to gaol until delivered up pursuant to the requisition.

Under the provision of this statute a warrant of commitment should show upon its face:—

\* See Appendix I.

- (1.) That a requisition had been made by the authority of the United States.
- (2.) That the offence was committed within the jurisdiction of the United States, and that must be their exclusive or territorial jurisdiction.
- (3.) That the committing magistrate had jurisdiction over the charge.
- (4.) That the evidence taken before the magistrate was such as according to the laws of this province would justify the apprehension and committal of the persons accused if the crime had been committed in this province, and upon such finding the warrant should order the committal.

But the warrant of commitment in this case is defective in the following particulars.

(1.) It does not state that the evidence before the magistrate was such as would have been sufficient to justify an apprehension and committal for trial in this province, and thereupon order the committal.

(2.) It does not allege the offence charged was committed in the United States, or within its jurisdiction. It simply alleges that Cape Cod is in the United States.

(3.) It shows the offence to have been committed on the high seas, 20 miles off Cape Cod, and beyond the territorial jurisdiction of the United States, and directs the prisoners to be detained "until delivered up pursuant to the requisition, &c." Whereas for an offence committed on the high seas *per se* the prisoners are justiciable in the courts here, and cannot be delivered up or discharged otherwise than by due course of law here.

(4.) It shows on its face that the magistrate who committed was acting simply as a justice of the peace, and not as a commissioner or officer under the Imperial statutes for the trial of crimes and offences committed on the high seas, and the commission for that purpose in force in this province, and therefore it shows that the case was without his jurisdiction, and does not come within the Imperial Act to give effect to the treaty.

(5.) It does not allege or show that any complaint or proceeding had been taken or was pending in the foreign state, or that the foreign state had made any application for the rendition of the prisoners under the treaty, or that the application was made by the *authority* of the United States.

(6.) It should not only show that the offence charged was committed within the jurisdiction of the United States, but should go further and negative any co-ordinate jurisdiction, which co-ordinate jurisdiction must be inferred from the allegation of the piracy being committed on the high seas.

And two minor objections are—

(7.) There is no allegation that the evidence was taken in the presence or hearing of the prisoners.

(8.) There is no allegation that the place where the evidence was taken was within the city and county of Saint John.

The warrant does not set forth the grounds of the commitment. A mere averment that it was issued "upon due proof as by the statute required" is insufficient. Nash's case 4 B. and Ald. 295. And so of the averment in the present case "upon the evidence before me taken on oath." And the form of warrant given in *In re Kane*, 14 Howard, 77, and the terms of the Canadian Act (Consol. Stats., Canada, c. 89.) passed to give effect to the Extradition Treaty are to the same effect. It is perfectly consistent with the terms of the warrant in this case that there was no evidence sufficient to justify the commitment by the laws of this province. A particular kind of evidence is required by the statute. And where a person is committed on a special authority, the commitment must be special and follow the authority. Here there is nothing to show the nature of the evidence or that there was any sufficient evidence at all. *Ex parte Anderson Jurist*, March 16, 1861, Ed. portion p. 110.

The warrant shows no proper jurisdiction of the United States over the offence. It alleges the parties were charged with having "on the high seas 20 miles N.N.E. of Cape Cod in the United States of America, with force and arms," &c. And the jurisdiction is sought to be inferred from the "Chesapeake" being a registered United States vessel, owned by a U.S. citizen. And even then there is nothing in the warrant to show Captain Willett was legally in charge of the vessel. Nor can the exclusive jurisdiction be inferred from the "Chesapeake" being a United States vessel. The jurisdiction of every nation extends "to the punishment of piracy and other offences against the law of nations, by whomsoever and *wheresoever* committed." Lawrence's, Wheaton's Intl. Law, 2d Ed., p. 231. A pirate is of no country and liable to be tried wherever he may be found, and wherever he may be arrested that country takes jurisdiction of his crime. *U.S. v. Palmer*, 4 Curtis, 314, *In re. Kane*, 14 Howard, 77.



The warrant should show on its face that the magistrate had jurisdiction. *Kite and Lane's case*, 1 B. and C. 101, in *re Peerless*, 1 Q. B. 143. Ordinary justices of the peace have no jurisdiction over piracy. The Imperial Act refers to this when it says it shall be lawful for the Lieutenant-Governor to require "all justices of the peace and other magistrates and officers of justice within their several jurisdictions" to aid in apprehending persons charged, and further that it shall be lawful "for any justice of the peace or other persons having power to commit for trial," to examine into the truth of the charge alleged. The only authority in this province to try charges of piracy is under the Imperial statutes 28 Hen. 8. c. 15. and 11., and 12 W. 3. c. 7., and under those statutes a commission has been issued and is in force. And the commission only extends to the persons named in it, and not to all magistrates within the province. Special statutes have given justices power to act in England, 7 Bac. Abr. p. 446, Title Piracy; 7 Geo. 4. c. 38.; but there is no such authority to justices here. Justices of the peace as such have no jurisdiction on the high seas. By the terms of their appointment in this province their jurisdiction is confined to the county for which they are appointed. The governor's warrant could give no jurisdiction. The Canadian statute specially authorises justices of the peace to act in such cases, but the Imperial statute does not, but limits the action of the respective officers "within their several jurisdictions."

The Lieutenant-Governor is bound to pursue the terms of the Act, and until a proper requisition is made he cannot issue a legal warrant. But the requisitions of the United States consul in the present case as shown in the recital in the warrant of commitment are not sufficient. They do not even assert the application to be made "by the authority," but only "on behalf" of the United States; terms entirely different, since an application may be made on behalf of another without his knowledge, and such an application would fix him with no liability. It may be adopted or repudiated as the party principal chooses. Nor does it appear that the right to make such requisitions is vested in the American consul *virtute officii*, nor is any direct authority or instructions to him, or any subsequent ratification of his actions shown, nor, if shown, could it cure the defect.

The warrant states the parties were brought up "to answer the complaint of Isaac Willett of the state of New York," and not a complaint made by authority of the United States. That complaint of Willett's was made in this province, and not in the United States. It was made before a magistrate who had no jurisdiction in cases of piracy. If he had power to take such a complaint where was the use of the Lieutenant-Governor's warrant at all. The whole proceedings were *coram non iudice*.

The requisition should be made by the executive authority. Opinions of the United States Attorney General, cited in Wheaton's Int. Law, pp. 241, 242.—Notes—in *re Kane*, 14 Howard, 77; and the terms of the Canadian statute are to the same effect. The United States consul's requisitions refer to no such authority. It is consistent with their terms that he merely applied to have the parties tried here. Nor does it appear that the parties have been legally "charged" in the United States as required by the terms of the statute. The requisitions merely say the parties were "believed to be guilty." The second section of the Imperial Act refers to "the depositions upon which the original warrant was granted," showing that their existence is necessary. And in *re Kane*, 14 Howard, 77, and *Metzger's case*, 1 Parker, C. 188, are to the same effect. Here even if the prisoners were taken to the boundary line, for all that appears on the warrant of commitment, there would be no one authorised on the part of the United States to receive them—no warrant issued there on which they could be detained.

This proceeding, though on its face a mere commitment for trial, is a quasi conviction, since the magistrate commits the parties to be handed over to another jurisdiction and deprived of rights they would here enjoy, and the warrant should therefore be construed with the utmost strictness.

But leaving the questions as to the validity of the warrant, and taking up the facts which appeared in evidence, the prisoners are entitled to their discharge on the following grounds:—

First.—The offence charged is piracy on the high seas. It is therefore cognizable by the proper tribunals of the country, and the parties committed do not come within the Extradition Treaty with the United States:—

(1.) The jurisdiction which a nation has over its public and private vessels on the high seas is exclusive only so far as respects offences against its own municipal laws. Piracy and murder on the high seas are punishable by the law of nations wherever the criminal may be found, and no country has exclusive jurisdiction of such offences,

(2.) No country can make that piracy which is not piracy by the law of nations, in order to give jurisdiction to its own courts over such offences.

(3.) The Extradition Treaty between the United States and Great Britain contemplates only a demand and delivery in cases where the crime committed falls exclusively within the jurisdiction of the country demanding, and is not applicable where a co-ordinate jurisdiction to try and punish for the crime committed exists in the country where the person demanded is found. Therefore, if the taking of the "Chesapeake" be piracy under the law of nations, the tribunals of this country can take cognizance of the crime, and the party charged can neither be demanded nor legally given up.

Second. Under the relative positions which the United States and the Confederate States bear to each other, both having been recognized as belligerents by Her Majesty's Government, the offence is not piracy at all, the parties committed are in no way punishable, and cannot be surrendered :—

(1.) It is not piracy, because open war exists between the revolted country of the Confederate States and the United States, and in such case the law of nations does not regard acts of aggression done by the subjects of the revolted country against the persons, property, or commerce of the parent country as piracy or murder, and the same immunity is extended to all who aid or are acting with them *bonâ fide* in the act committed.

(2.) The circumstances of the case show conclusively that the parties seizing and taking the "Chesapeake," in so doing were not acting as pirates *cum animo depredandi aut furandi*, but as belligerents seeking to capture and destroy the property of an enemy, and acting in the name of and on behalf of the revolted country.

(3.) It is not even necessary in such cases that the party acting should be commissioned by his Government, that is simply a matter between himself and his own Government, and affects him so far only as it vests the property captured in the Government and not in the captor. It is only necessary to prove two facts, first, the existence of open war; second, that the act done was not for piratical purposes, but in the furtherance of a belligerent object.

(4.) Great Britain having recognized the Confederate States as belligerents, the subjects of the Confederate States must be regarded *quoad hoc* as ceasing to be subjects of the United States, and not bound by its municipal laws, so that even though the seizure and taking of the "Chesapeake" might in a subject of the United States be piracy, yet it cannot be so in a subject of the Confederate States or those acting with them.

(5.) The term piracy used in the treaty must be regarded as used in a sense which would not clash with the law of nations, not as used in the sense created for it by the municipal law of a particular country. Thus the law of nations does not regard acts committed by belligerents as piratical, though the country against which the acts have been committed may have passed a law that those acts are piratical. The word "piracy" as used in the treaty must have reference to acts for which there is no punishment in the country to which the party charged has escaped, but which in that country, if committed there, would nevertheless be considered as piracy, for instance certain offences in harbours, &c. In the present case, the offence being on the high seas, cannot come within the latter class, and Great Britain having recognized the Confederate States as belligerents, they cannot come within the former.

(6.) Officers and men having no permanent connection with the country, or interest in its cause, are and may be privateers, and cannot be treated as pirates, and fraud may be employed as well as force.

(7.) The courts of a neutral government which recognizes the existence of a civil war in another country cannot consider as criminal those acts of hostility which war authorises, and which the new government may direct against its enemies.

Third. The court of a justice of the peace has no jurisdiction in cases like the present, and a justice of the peace as such has no power either to investigate or commit:

(1.) A justice of the peace has no jurisdiction or authority to issue a warrant or hold an investigation, and the governor can give no such authority.

(2.) The warrant issued in this province, must be based upon preliminary proceedings had before a competent tribunal in the United States, having jurisdiction of the offence, and showing that the criminal acts charged were committed within the territorial jurisdiction of the United States, which proceedings must be forwarded to the governor of this province, before the governor can issue his warrant, in order to give any tribunal or authority in this province jurisdiction to inquire into the offence.

(3.) On the face of the warrant to apprehend the prisoners, it discloses no requisition made by the proper authorities of the United States, by its authority, as required by the treaty, and is therefore invalid.



(4.) It does not show that in the United States any complaint has been lodged or proceeding taken against the parties charged, on which the proceedings in this province can be based, and is therefore on that account invalid.

(5.) The warrant to apprehend the prisoners is defective in combining two crimes which are triable before separate and distinct tribunals.

(6.) The authority to a magistrate to act is limited to such crimes as could be committed in that part of the kingdom in which the magistrate resided; and as the high seas are not a part of Her Majesty's dominions, a justice of the peace, in the absence of any specific legislation thereupon, has no jurisdiction or power to act in any matter relating to piracy; the examination and warrant in such cases must be before one of the officers composing the mixed court for the trial of piracy and offences on the high seas, constituted by the Imperial Act.

Fourth. This expedition, starting in a neutral territory, however gross a violation of that neutrality, does not affect the status of parties engaged in that expedition, *quoad* the other belligerents, but only is illegal as regards the neutral country whose laws have been violated.

Fifth. The evidence showing that these prisoners were enlisted in the cause of the Confederate service, under a genuine commission of that state, this neutral court cannot inquire into the validity of that enlistment, except for offences against its own laws.

It has been urged that the "Chesapeake" being an United States ship, her deck should for all purposes be considered a portion of the United States territory. The police magistrate in part based his decision upon this; but the authorities cited ("Wheaton's Int. Law, p. 208, Vattel, Laws of Nations, book 1, c. 19, sec. 216, and book 2, c. 7, sec. 8,) do not bear out the conclusion. The jurisdiction of a nation in such case is exclusive only so far as respects offences against its own municipal laws (Wheaton's Int. Law, pp. 735, 208, 209, 256, Dictum of Cockburn, C. J., Regina v. Heane, *Times* of Feb. 1st, 1864). The offence charged in the present case is piracy on the high seas, there is no allegation in the warrants of any violation of the municipal laws of the United States; but piracy by the law of nations was never contemplated by the Extradition Treaty or statute. It only contemplates piracy by municipal law (Wheaton's Int. Law, p. 240, n. 1). It could never have been intended to deprive either of the contracting parties of a jurisdiction it already possessed; the reason of the treaty and statute is plainly that escaping prisoners not punishable by the laws of one country should be delivered up to the other, and if this crime can be punished here that reason is at an end. If the word piracy in the statute is to have a general meaning, France might claim the jurisdiction as well as the United States. There is no necessity for the treaty as regards piracy on the high seas. A party committing such an offence is to be tried within the jurisdiction where he is found (in re Kane, 20 Curtis, 93). And the United States statutes, as put in evidence, require that pirates should be tried in the first district in which they are taken or found, and give jurisdiction to that district court alone (3 U.S. Statutes at Large, p. 514). And no legislation on their part could make an offence on the high seas piracy, so as to give their courts exclusive jurisdiction (U.S. v. Palmer, 4 Curtis, 314. The Antelope, 10 Wheaton, 344). Their jurisdiction not being exclusive, in giving up parties triable here, we should stultify ourselves. The right to try the offence attaches in the United States only on the parties being found there; the statute only contemplates the rendition of *fugitives* escaping from justice in another country, which these are not.

The acts of the captors of the "Chesapeake," subsequent to the vessel's capture, cannot render their act piracy. Belligerents have no rights; their vessels and goods, when captured by an enemy may be disposed of as he pleases. Wheaton's Int. Law, pp. 629, 659, 669; 13 Howard, 515.

The treaty did not contemplate civil war. In the present case the parties claimed to capture vessels for the Confederate States. They had the colour of a commission. If a *bonâ fide* commission it was sufficient to protect them. A belligerent may enlist men in a neutral country, though amenable to its municipal laws for doing so. The offence is only cognizable by the neutral state. An officer may be shown by his acts as well as by his commission. Here Parker was recognised in the British harbour of Nassau, as having a letter of marque. A person having a letter of marque implies his having men, and he has a right to send his officers and men out to act on separate expeditions. The evidence shows a *bonâ fide* enlistment in the Confederate service. A person may obtain the rights of a citizen of a foreign country without naturalization. *Marryat v. Wilson*, 1 B. & P. 444. *The Santissima Trinidad*, 7 Wheaton, 283. In this case Captain

Parker had been for 20 years a resident in the Southern States. Any private citizen of a belligerent has a right to destroy the enemy's property wherever found. A commission from the belligerent government is unnecessary. *Kents Coms. v. 1*, pp. 106, 7, 8, *Wheaton's Int. Law*, pp. 252, 627. The only effect of the want of a commission is that a prize goes to the Government and not to the captor. As between belligerents, any man fighting on one side is the enemy of the other; but the genuineness of the commission in the present case is undoubted. The right of Captain Parker to hold it is alone questioned; but a commission does not follow the ship. It goes to the commander.

There is no evidence of any legal proceedings before any United States tribunal. No warrant appears to have issued in the demanding country as was the case in *ex parte Besset*, 6 Q. B. 481, and *In re Kane*, 20 Curtis, 64. Nor can the application be made by the consul *virtute officii*. In the United States the necessity for the prior action of the Executive is done away with by their statute, but here it is otherwise. And the consul's application was only supported by a deposition not clearly charging piracy and sworn before a magistrate who in a case of piracy had no authority to take depositions at all. The proceedings must be construed *strictissimi juris* and the warrant, &c. cannot be corrected by the depositions. *Ex parte Besset*, 6 Q. B. 481, *Christie v. Unwin*, 11 Ad. and E. 373.

An expedition organized in a neutral country is only illegal so far as the neutral country is concerned. The legitimacy of the use of mercenary troops has always been recognized. A familiar instance is that of Sir De Lacy Evans, and the Spanish contingent. The only party to complain is the neutral whose territory or subjects are employed.

The evidence shows clearly an enlistment. However gross an infraction of neutrality that enlistment is only punishable by our own laws. The United States cannot complain. Had Parker been at Nassau without authority he would have been taken and punished. His commission was duly transferred from Power the "Retribution's" first captain. The witness Colcock's signature being official must be presumed correct. The commission was shown by Parker as his authority, and the men enlisted under him in the service of the Confederate States, for the purpose of waging war against the United States.

[Ritchie, J.: Assuming as you must do at this stage of your argument, the correctness of the proceedings against the prisoners, and the magistrate's jurisdiction of the offence, do not these questions fall within the province of the superior court on the trial of the prisoner? Is it not the magistrate's duty now merely to see if a preliminary case is made out? I think we must act in this case, just as if it was an offence committed here. The question is, would I on the evidence commit for trial in this country. If so, must I not commit the parties for extradition?]

In Anderson's case a *prima facie* case was made out, but the prisoner was discharged. And so in *U.S. v. Palmer*, 4 Curtis, 314. Parker is found in command of the "Retribution" and Braine and Parr acting under him.

[Ritchie, J.: I think these questions are proper for a jury and not for the magistrate. His duty is simply to deal with this case as a magistrate would deal with an offence to be tried in this country.]

The parties were only making war on the United States. They took the vessel on the part of the Confederate States. The organization was under the colour of a Confederate commission and that was sufficient.

But if all other points fail, the heading placed by the police magistrate to the depositions is sufficient to discharge the prisoners. He says the prisoners were charged with having committed piracy "within the jurisdiction of the United States and the circuit courts thereof, and against the laws of the United States, and the statutes of the United Kingdom of Great Britain and Ireland." But by the United States statutes put in evidence, it is clear that those courts have no jurisdiction until the prisoner is found within their districts, and there is no evidence in this case of any such jurisdiction attaching at all. The United States by their Acts of Congress recognize that the high seas are not within that jurisdiction. Besides, the evidence varies from the Lieutenant-Governor's warrant, which gives no authority to inquire into offences committed within the jurisdiction of the circuit courts of the United States, and against the statutes of the United Kingdom of Great Britain and Ireland. The allegations put in by the magistrate were not read to the prisoners—were not charged at first. They arose out of the evidence and on the argument before the magistrate. There is nothing in the original warrant and proceedings to support the



investigation of such a charge; and unless the evidence was taken under those warrants and proceedings, it was not rightly taken at all.

Wetmore, Q. C., (with him was Tuck) for the prosecution.

Admitting the first deposition of Willett's before the police magistrate to have been taken without jurisdiction and *coram non jndice*, the United States consul's letter containing the statement of the offence, and names of the parties, and professing to be made by authority of the executive department of the United States Government, is in itself sufficient. The only person to judge of the validity of the requisition is the Lieutenant-Governor. If a requisition is presented to him he must decide, and no inconvenience can arise from this, as the parties are not committed to be given up under the governor's warrant alone. It merely authorises an investigation. The statute does not require the requisition to be in writing. A verbal one would be sufficient.

The governor's warrant recites the treaty, and although it states that requisition had been made *on behalf* of the United States, it says also that it was made "in pursuance of the treaty;" the words "on behalf of" were unnecessary. They are mere surplusage. The warrant would be sufficient if they were left out.

With regard to the magistrate's jurisdiction in cases of piracy, the words of the Imperial statutes are cumulative. Where it says "it shall be lawful for any justices of the peace or other person having power to commit for trial" to examine into the charge &c., it is intended that any of these persons may act in the investigation of any of the offences referred to. The magistrate under the statute is to examine into the charge, and this whatever it is, and wherever he may do it, it will be equally valid. It is not necessary that it should be in presence of the party. The statute authorises the examination into the offence, even before the warrant for the apprehension of the criminal is issued.

Under the construction of the Act the magistrate must first issue his warrant to apprehend, and then by warrant commit the offender. No evidence subsequent to the issuing of the warrant is required. The magistrate could, had he seen fit, have committed them on Willett's depositions alone.

The second section of the statute which enacts that "copies of the depositions upon which the original warrant was granted, certified under the hand of the person or persons issuing such warrant, and attested upon oath, may be received in evidence," does not render a preliminary proceeding in the demanding country necessary in all cases. The words are merely permissive. They legalise the use of such depositions if taken in the demanding country, do not render it necessary to take them. The parties were duly "charged" within the terms of the statute by the United States consul's requisition. The word "charged" in the statute does not mean any specific charge or particular form of charge. Suppose the case of proceedings before a justice on an accusation of murder; but it appeared on investigation that the crime had been committed beyond his jurisdiction, and in the United States. There the party would be "charged" by the depositions before the justice. And in this view the parties were "charged" by Willett's first deposition. In the form of warrant given in Besset's case (6 Q. B. 481), the word used is not "charged" but "accused."

The statute does not confine the rendition to *fugitives* from the jurisdiction of the demanding country. The words of the treaty recited in the statute expressly extend to all criminals who "should be found" as well as those who "should seek an asylum" within the territories of the other nation.

As to this crime having been committed on the high seas and our courts having jurisdiction over it, there can be no doubt that the courts of the United States have a co-ordinate jurisdiction. Having made a requisition, then they are entitled to have the criminals given up. The United States vessel was United States territory, and the United States had full jurisdiction over her. Kent's Com. Ed. 1832, v. 1, pp. 184, 186, 187. Wheaton's Intl. Law, pp. 208, 209, *Regina v. Heane*, *Times*, February 1, 1864. "The Flowery Land," *London Morning Post*, February 5, 1864. The "Chesapeake" had an United States register and carried the United States flag.

There is nothing in the statute to limit the word "piracy" to municipal piracy. If it does not mean piracy by international law it means nothing at all, and if it intends only what would be piracy by the municipal law of the United States and not here, for such an offence the parties could not be given up at all. There must be a similarity in the laws of the two countries as to the offence.

The question of the parties holding a valid commission from the Confederate States would clearly be a matter for consideration at their final trial, and not at this preliminary

stage of the proceedings. It is a question for a jury. There was no real proof of Colcock's signature to the transfer from Power to Parker.

No greater particularity can be required in the warrant of commitment in the present case than in any proceeding in our own courts. This is a preliminary proceeding, and no such great particularity is therefore required. Besides the proceedings may be amended. The English decisions cited on this point by the prisoner's counsel do not apply. The Act under which the order was granted in this case differs from the habeas corpus statutes, and enables the judge to "make such order as he may deem necessary." The magistrate's heading of the evidence is immaterial. It cannot create any variance between the Lieutenant-Governor's warrant and the proceedings taken under it, or invalidate the proceedings if otherwise correct.

Gray, Q. C., in reply. The alteration in the heading of the evidence is very important. It saps the very foundations of justice. If a requisition is made and a warrant issued, and the magistrate takes evidence on a different charge it is a serious matter. The alteration has a suspicious appearance, and was made to cover an objection raised at the trial. It has a material bearing on the case. If the evidence does not correspond with the Lieutenant-Governor's warrant what evidence is there to show the parties are guilty at all. In that case the parties are in gaol under a commitment not supported by the evidence. If there is no evidence the commitment is irregular and illegal. If there is evidence it does not support the charge. And the proceedings cannot be amended by the evidence. *Christie v. Unwin*, 11 Ad. and El. 373.

As to the sufficiency of the requisition, the effect of the argument of the counsel for the prosecution would be that a warrant for the arrest of any person claimed to have committed an offence in the United States could be issued without any sworn depositions at all, and the evidence negatives the inference drawn from the warrant's reciting it was issued "in pursuance of the treaty." Surely any person calling himself an United States consul cannot by merely writing a letter to the Lieutenant-Governor have a warrant issued calling on all magistrates to arrest any number of Her Majesty's subjects the consul may choose to name.

And under the Imperial statute, the Lieutenant-Governor's warrant could not authorise the magistrate to take Willett's second deposition. It could only authorise magistrates to act "within their several jurisdictions." The United States can only be entitled to jurisdiction over piracy on the high seas when the pirates are found within their jurisdiction. If found here we have jurisdiction, and our courts must use it. There is nothing to show that this particular case is, in the opinion of the United States Government or courts, within their jurisdiction. Had proceedings first been taken there it would have been otherwise. There is now no United States officer authorised to receive the prisoners on their being taken to the boundary. The original warrant is bad, as combining two distinct offences, murder and piracy.

The learned judge having taken time to consider, on the 10th March 1864 delivered the following

#### JUDGMENT.

In re DAVID COLLINS, JAMES MCKINNEY, and LINUS SEELY, prisoners confined in the common gaol of the city and county of Saint John.

This was an application made to me on behalf of the above-named prisoners, under the Act of Assembly, 19 Vict. cap. 42., entitled "An Act for better securing the liberty of the subject," and sufficient cause having been shown to me, I did by order in writing require and direct the keeper of the gaol of the city and county of Saint John to return to me whether or no the said parties were detained in prison, together with the day and cause of their having been taken and detained, to which order the sheriff of the city and county of Saint John, the keeper of the said gaol, returned to me that the said parties were confined in the said gaol under a warrant from Humphrey T. Gilbert, police magistrate and justice of the peace for the city and county of Saint John, from the following dates, McKinney from the 26th day of December last past, Collins from the 27th of December, and Seely from the 1st day of January last past; except when ordered for examination by the said magistrate up to 11 o'clock or thereabouts of the morning of the 24th February, then instant, when they were taken to the office of the said magistrate; that the said Collins, McKinney, and Seely were committed to the said gaol at mid-day on the 25th day of February then instant, with a warrant or commitment which the said sheriff sets out *verbatim*; and this he returns is the cause of the detaining of the said parties whose bodies he says he has ready.



The warrant or commitment set forth is under the hand and seal of Humphrey T. Gilbert, Esquire, a justice of the peace of the city and county of Saint John, and police magistrate for the city of Saint John, and dated 25th February 1864. (Vide Appendix F.)

On this return being made to me at the time appointed for the hearing of this matter, on application made on behalf of the said prisoners on the affidavit of David Collins, I did, in pursuance of the power and authority in me vested by the Act of Assembly, 19th Vict. chap. 42., require and direct a return to be made to me of all the proceedings, examinations, orders, and depositions taken before H. T. Gilbert, P.M. and J.P., &c., under and by virtue of a warrant purporting to be issued by His Excellency the Lieutenant-Governor, dated the 24th Dec. 1863, the same being deemed by me necessary and proper for the purposes of justice to enable me to examine into and decide upon the legality of the imprisonment of the said parties, and I directed that notice of such order should be forthwith served on Mr. Gilbert, who, upon notice thereof, returned to me all such proceedings and documents before him, that is to say, the warrant from His Excellency the Lieutenant-Governor, the complaint of Isaac Willett, Mr. Gilbert's first warrant to apprehend the prisoners, the evidence and all proceedings on the part of the prosecution, and the evidence and all proceedings on the part of the prisoners, including copies of the original letters and the requisition of J. Q. Howard, Esq., U.S. consul at the city of Saint John, upon which the warrant of His Excellency was issued, and of the original depositions of Isaac Willett and Daniel Henderson transmitted by the said consul with one of the said letters, duly certified agreeably to the Act of Assembly, under the hand of the Hon. S. L. Tilley, provincial secretary, and the charge at length on which the examination before Mr. Gilbert proceeded. (Vide American consul's letters, Appendix A.)

The depositions transmitted with one of these letters professed to have been sworn before "H. T. Gilbert, police magistrate of the city of Saint John," on the 22nd Dec. 1863, the *jurat* does not say where. The depositions are headed "Province of New Brunswick, city and county of Saint John, to wit," and commence "Isaac Willett, of the city of New York, in the state of New York, United States of America, captain of the steamer 'Chesapeake,' belonging to the United States of America, and Daniel Henderson, of the city of Portland, in the state of Maine, one of the United States, second mate of the said steamer," and then detail, so far as within their own knowledge or what they heard on board, the circumstances of the capture by certain passengers (15 in all), of whom the names of Braine, Collins, Robinson, and Parr are given, the names of the others being unknown to them, of the steamer "Chesapeake" when she was about 20 miles north-north-east of Cape Cod, the shooting of the engineer, wounding of the mate and second engineer, and the forcible taking possession of the vessel, and the sending on shore in New Brunswick of the captain and all the crew except the first and third engineers, and three firemen, who were retained on board; and the deponents state that they are informed and fully believe that J. C. Braine, H. C. Brooks, David Collins, John Parker Locke, alias John Parker, Linus Seely, George Robinson, Galbraith Cox, Robert Cox, James McKinney, Robert Clifford, and H. A. Parr were, among others, the captors of the said steamer "Chesapeake," a steamer of the said United States of America, on her passage from New York to Portland, and that these persons being passengers on board took forcible possession of the said steamer against their will and that of the other officers and crew of the said steamer. But except detailing the facts above referred to, no charge of piracy or murder is made, and no allegation whatever of the acts having been committed within the jurisdiction of the United States.

Vide Appendix I. for charge, touching which the witnesses were examined by Mr. Gilbert.

The prisoners by their counsel claim that their detention is illegal, and a great variety of objections were urged at length to the proceedings in this case. They are all, I think, covered by the following:—

First.—That there was no legal charge against the prisoners in the United States or in this province of an offence mentioned in the statute committed within the jurisdiction of the United States, nor any proper requisition by the authority of the United States for the rendition of the prisoners, and therefore the Governor had no authority under the treaty and statute to issue his warrant.

Secondly.—That if he had, Mr. Gilbert had not, either as police magistrate for the city of Saint John, or as a justice of the peace for the city and county of Saint John, any authority to examine touching the truth of the charge of piracy alleged in the warrant, or to commit the persons accused thereof.

Thirdly.—That if Mr. Gilbert had jurisdiction, the evidence before him showed that the offence was not piracy, and the prisoners were not guilty of that crime, and consequently there was no evidence of the truth of the charge, but to the contrary.

Fourthly.—That if he was not wrong in this he wrongfully took a fresh complaint, and wrongfully examined on charges contained in that complaint, and not on the charge in the Governor's warrant, and that the warrant he issued and under which the prisoners are now detained is bad on its face and not sufficient in law to justify their detention.

The Queen has a right to know why any of her subjects, or persons in her dominions, who are alleged to be wrongfully imprisoned are so restrained of their liberty. The writ of habeas corpus at common law and by statute, and the statute of the General Assembly under which I am now acting, are the constitutional means in this province by which all alleged improper imprisonments are inquired into, and Her Majesty's Supreme Court and the judges of that court are bound on proper cause shown to investigate all cases of alleged unlawful arrest, and to relieve therefrom if shown to be contrary to law. The right to grant such relief in this case has not been, and cannot be questioned. Having then all the proceedings before me I have to ascertain and determine whether or not such proceedings are justified by and in conformity with the treaty and Act of Parliament. If they are, this application must be dismissed. If they are not, the prisoners must be discharged.

The treaty, under which the delivery up to the United States Government of the prisoners is sought, is a treaty ratified on the 13th of October 1842 "to settle and define the boundaries between the possessions of Her Britannic Majesty in North America and the Territories of the United States"—for the "final suppression of the African slave trade, and for giving up criminals, fugitives from justice, in certain cases." The recital of it having reference to that portion which bears on the present case is:—"Whereas it is found expedient for the better administration of justice and the prevention of crime within the territories and jurisdiction of the two parties respectively that persons committing the crimes as hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up." And Article X. contains the stipulation agreed on. (Vide Appendix B.)

To enable this treaty to be carried out in the British dominions a statutory enactment was necessary, and the Parliament of Great Britain in the sixth and seventh year of Her Majesty's reign passed an Act for giving effect to the treaty, which, after reciting the 10th article of the treaty, and the 11th with reference to the duration of this portion of it, after reciting that it is expedient that provision should be made for carrying the said agreement into effect, enacts as follows:—Vide Appendix C.

The authority which this statute gives the officer administering the government of any colony and all justices of the peace and other magistrates and officers of justice within their several jurisdictions to act being a statutory power, they must one and all act strictly in accordance with the authority given, and rigidly pursue that authority. Bearing this in mind, I proceed to the consideration of the first objection. We must look closely to the Act of Parliament, for it is from that, and that alone, the authority to act proceeds, and the very first words of the enacting part of the statute show that the basis of this right is on an event. "In case requisition shall at any time be made by the authority of the United States in pursuance of and according to the said treaty for the delivery of any person charged with (certain crimes, including piracy,) committed within the jurisdiction of the United States, &c." Thus we see the requisition is not to be a simple bald request for the delivery up of the person named, but it is a requisition which must be by the authority of the U.S.—it must be in pursuance of and in accordance with the treaty—it must be for the delivery of a person charged with one of the offences mentioned in the treaty, and the offence with which he is charged must have been committed within the jurisdiction of the United States. If a case perfect in all these ingredients is presented, the statute says it shall be lawful for the administrator of the government of any colony or possession by a warrant under his hand and seal to signify that such requisition has been made. Deficient in any one of these statutory requirements the Governor is powerless to act.

Let us therefore examine the documents upon which His Excellency issued his warrant in this case. They all bear date on the same day, and in the absence of any evidence to the contrary, I may assume were laid before His Excellency at the same time, but the letter signed J. Q. Howard, U.S. consul, in which the prisoners are named, would appear to have been the first written. It is a communication addressed to the Lieutenant-Governor through the Provincial Secretary. The first part of this letter is simply a request that the Governor will use his authority under the Act of Parliament "to the end that certain offenders (not naming them or their crime, or the place or jurisdiction



“ within which committed) may be apprehended and delivered up to justice ” (not stating to whom). It then proceeds to desire the Secretary to make known to His Excellency, that, as an officer of the United States Government, the writer is authorized by the executive department of that Government to make a requisition upon him as the officer administering the government of this province, in order that certain persons (not naming them) believed (not charged) to be guilty of the crime of piracy (not stating within what jurisdiction committed, and not stating whether piracy against the law of nations or piracy against the municipal laws of any particular country) may be brought before the proper officers of justice, so that the evidence of their guilt or innocence may be heard and considered ; and then he requests, that, in accordance with the provisions of the said Act of Parliament, His Excellency will, by warrant, signify that a requisition has been made for the apprehension of John C. Braine, and others, including the prisoners, and require that all justices of the peace and other magistrates within the jurisdiction of this province shall aid in apprehending the above-named persons accused (not charged) of the crime of piracy, for the purpose not of having them delivered up, but for the purpose of having them brought to trial. Under the statute we have seen the requisition must be made “ by the authority of the United States,” that is of the Government of the United States. Had Mr. Howard been a public minister of the United States, and so the representative of that Government, a requisition by him would doubtless have been good ; but I am not aware that as consul he had any such authority unless specially delegated. Perhaps the fair construction of that letter would be that Mr. Howard intended to convey to the Governor that he was so specially authorized, but the authority he claims is simply “ in order that certain persons believed “ to be guilty of the crime of piracy may be brought before the proper officers of “ justice, so that the evidence of their guilt or innocence may be heard and considered.” This is all that he puts forward as to the extent of his authority, and upon this, without production of the authority, he proceeds to request that His Excellency will, by warrant, signify as before stated. No authority from the Government of the United States is shown or directly alleged authorizing him to ask for the apprehension of the individual parties he names, or to ask for their apprehension as charged with the crime committed within the jurisdiction of the United States, but simply of parties accused of the crime of piracy, for the purpose not of being delivered up under the treaty, but for the purpose of having them brought to trial. Had His Excellency issued such a warrant as is here asked for, I have no hesitation in saying, for the reasons that will hereafter be given in considering another branch of this case, it would have been bad. Is the matter then helped by the second letter ? By this letter the consul transmits affidavits of the captain and second mate, sworn at Saint John before H. T. Gilbert, police magistrate, on no charge or complaint, to be presented to His Excellency in case “ he requires evidence of the “ criminality of the persons charged with the crime of piracy before issuing the warrant “ for having them brought to trial.” A sincere hope is then expressed that no obstacle will be thrown in the way of bringing those charged with so grave an offence to justice. If there are deficiencies in the first it can hardly be urged that they are supplied by this letter or by the depositions accompanying it. His Excellency being one of the Commissioners named in the Royal Commission for taking information and apprehending and committing for trial persons charged with offences on the high seas, and if brought to trial, one of the judges to try them, this letter, instead of being a requisition under the statute, or in aid of a requisition, if I may use the expression, more resembles an application to His Excellency in that capacity than to him under the 6th and 7th Vict., as an officer administering the government, more particularly as the last paragraph says :— “ We had believed until this late hour that a requisition before the Executive would not have been required in the first instance,” which would rather corroborate the view that proceedings were desired, independent of a requisition. As to the depositions, in my opinion it cannot make the requisition good if not good without it.

It appears to have been sworn before Mr. Gilbert as police magistrate, and was, I think, on his part wholly extra-judicial. No complaint or information appears to have been laid before him to justify his taking the deposition, and if the charge of piracy, which the statements in it unanswered would justify, had been made at that time before him, he had no jurisdiction to entertain it ; still less had he jurisdiction if the offence was an alleged crime committed within the jurisdiction of the United States, and therefore amounted to no legal charge, and to no legal evidence of the crime of piracy ; but is it not absolutely necessary that the parties should be charged with the commission within the jurisdiction of the United States of one of the crimes mentioned, that is legally charged judicially, or by public process, or in some manner warranted by the laws of the country in which the alleged offence was committed. I think the words of the statute

too clear to admit of any reasonable doubt on this point ; and the second section of the Act confirms me in this view. This section contemplates it being done by the issuing of a warrant, for in providing that certain evidence may be used by the magistrate or officer in the investigation of the criminality of the person apprehended, it says, "copies of the depositions upon which the original warrant was granted, &c." This obviously refers to the original warrant granted in the country where the crime was committed, and anterior to the requisition ; and this view would seem to be entertained by jurists of the highest celebrity in the United States, for in the judgment of Nelson, Justice, in the Supreme Court of the United States in Kane's case, as reported in 14 Howard, he says : "This species of evidence is very differently guarded in the Act of Parliament, 6th and 7th Vict. There, copies of the depositions laid before the Government, and upon which the proper officer issued his warrant to the magistrates authorizing them to institute proceedings to arrest and commit the fugitive, are those only permitted to be given in evidence ; in other words, copies of the depositions upon which the Government acted in the matter are admissible as evidence of criminality. The original of these are those upon which our Government make the requisition, and of course the good faith of the nation is pledged that they are taken before competent officers, and that the facts stated are true." And Chief Justice Taney concurring, as he said he did, in all that Nelson, Justice, then said, contented himself with expressing his entire assent to the opinion Nelson had then just delivered ; and Daniel, Justice, concurred in all that Nelson, Justice, said. And that this principle has been acted on will be seen by reference to Bisset's case, 6 Ad., and El., in England, where we find a warrant was first issued in France, and to Kane's in the United States, just referred to, where a warrant was issued in Ireland, in addition to the special authority and affidavit of the consul. In Kane's case, reported in 14 Howard, Mr. Barclay, the British consul, was specially employed, the report says, by direct authority of the British minister, accredited to the Government of the United States, and in pursuance of this authority Mr. Barclay made the necessary affidavit ; and no case has been cited to me, nor am I aware of any, where a different practice has been adopted. On the contrary, I find in a note to the last edition by Lawrence of Wheaton's International Law, this view confirmed by the opinion of Mr. Cushing, May 21st, 1854, in the published opinions of the Attorneys General of the United States, volume 6, page 485. The practice is declared by him in these words :—

"The practice of our own Government, as well as that of Great Britain, requires that all claims of extradition should be founded on a judicial warrant, with proper evidence to justify the warrant. The United States will not, therefore, make a demand on Great Britain for a person alleged to be a fugitive from the justice of one of the United States without the exhibition of a judicial warrant issued on sufficient proof by the local authority." And again, in an opinion by the same learned gentleman, Nov. 2, 1854, published in the same work, vol. 7, page 6, he says : "A mere notification from a foreign legation that a party guilty of a crime has escaped, and perhaps fled to the United States of America, is not sufficient to justify the preliminary action of the president. The general rule is, the Government of which extradition, whether by comity only (citing Kluber, sec. 66, Martin's Précis, sec. 101), or by treaty, is demanded, before it is called on to act, must have reasonable *prima facie* evidence of the guilt of the party submitted to it, as well as the demand of the Executive authority." And again, vol. 8, 215 page, in another opinion of the same, he says : "But to justify the commencement of proceeding in extradition it must appear that the criminal acts charged were committed within the territorial jurisdiction of the demanding Government."

But suppose the documents contain a charge against these prisoners, where do we find it alleged in them that the offence charged was committed within the jurisdiction of the United States of America? The crime stated is piracy. In its primary and general signification this indicates an offence against the law of nations, justiciable wherever the offender may be found. In the codes of different countries it has been arbitrarily adopted as a term applicable to offences against the municipal laws of such countries, or as expressed by the Commissioners in England in their report on the criminal law, "by statutes passed at various times and still in force many artificial offences have been created which are to be deemed to amount to piracy." All such offences would be cognizable only by tribunals having jurisdiction either territorially or over the person of the offender. If it was intended in this case to be used in its limited or artificial sense, should not the requisition have shown it, to enable the Governor so to state it in his warrant ; otherwise how could the justices or officers, without knowing whether it was such an offence as would be cognizable in our courts possibly be able to inquire into the



sufficiency of the evidence according to the laws of this province? If it was intended to use the term, as I think it must be taken to have been in its general sense, then the question has been raised, whether, inasmuch as it was not alleged that any of these parties had been in the United States since the acts on the high seas complained of were committed, but the contrary was admitted on both sides, how can the offence be considered as committed within the jurisdiction of the United States? The object of the treaty is to be found in one of its recitals, which is: "Whereas it is found expedient for the better administration of justice and the prevention of crime within the territories and jurisdiction of the two parties respectively, that persons committing the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up."

It is well known that the principles of the common law pervade the jurisprudence of both Great Britain and the United States, and by the common law crimes are unquestionably considered local, cognizable, and punishable exclusively in the country where they are committed; and it was doubtless to prevent the failure of justice that would necessarily result from offenders in one country seeking refuge in the other, and there being amenable to no punishment, that this treaty was entered into; and it is not difficult to understand how the crime of piracy, in its general sense, might come within the operation of the treaty when a pirate having gone into one or other of the countries and so made himself amenable to its courts and had been there legally charged with the offence had fled or been subsequently found within the territory of the other, that in such a case the country where he was first found might claim jurisdiction over the crime and the person so charged. But I have great difficulty and am as yet unable to arrive at the conclusion that, when the pirate has never after committing the offence entered the country of one of the contracting parties, but is found in the territory of the other, the Government of the former can assume jurisdiction over the offence and person, and require him to be given up, and so denude the latter country of its clear jurisdiction in the matter.

I cannot, as at present advised, think it was intended by this treaty to raise such a conflict of jurisdiction and authority, but that the word piracy was intended to apply to piracy in its municipal acceptation, or if to piracy against the law of nations then to the exceptional case I have above supposed; but assuming the offence as alleged to be one within the treaty, and the requisition to be sufficient, I proceed to consider the next objection.

Had Mr. Gilbert, either as police magistrate, or a justice of the peace, authority to examine touching the truth of the charge?

The terms of the statute are that the warrant of the Governor shall "require all justices of the peace and other magistrates and officers of justice within their several jurisdictions to govern themselves accordingly and to aid in apprehending, &c.,—and thereupon it shall be lawful for any justice of the peace or other persons having power to commit for trial persons accused of crimes against the laws of that part of Her Majesty's dominions in which such supposed offenders shall be found, to examine upon oath, &c." The words of the statute differ from the treaty. The words of the treaty are "judges and other magistrates." I am bound to think this alteration advisedly made, and I find it difficult to conceive any other reason than to preserve consistency in the administration of justice. In the treaty nothing is said as to the jurisdiction of the justices and other magistrates. In the statute the Governor can only require justices of the peace and other magistrates and officers of justice to act within their several jurisdictions; beyond their jurisdiction then they cannot act. But the statute says, it shall be lawful for any justice of the peace or other person having power to commit for trial persons accused of crime, &c.,—that is, I am inclined to think, when accused of crimes in the United States over which the officers respectively have jurisdiction to commit if committed in this province. Then in such cases they should examine on oath, and if the evidence would justify their committal here, issue their warrant, &c.; and an insertion of the words "or other persons having power to commit for trial" would seem unnecessary if justices of the peace and other magistrates could act in all cases. As at present advised, I am disposed to read the terms "in their several jurisdictions" in their broad signification. I think it more consistent with the scope of the statute and the duties to be performed that they should be considered as applying to their judicial as well as their territorial jurisdiction, it being, I think, unreasonable to suppose that a justice of the peace, who cannot receive an information on a charge of piracy, or examine into the truth of such charge if cognizable in this province, should, if committed in the United States, determine on the sufficiency of the evidence according to the laws of this province if the crime was committed here; or in

like manner that the Commissioners authorized solely to receive information and commit for trial in cases of offences on the high seas, should deal with crimes over which if committed in this province they have no jurisdiction; and from this construction no possible difficulty can arise, because for every crime named in the statute we have either the justices of the peace or other persons having power to commit for trial; so that in this case when it appeared by His Excellency's warrant that the crime charged was piracy, Mr. Gilbert, whether as police magistrate or justice of the peace, not having jurisdiction over such an offence and no power to commit for trial a person charged with piracy, could have referred the matter to the judge of the Court of Vice-Admiralty, or some other one of the Commissioners having authority over that offence and power to commit for trial persons charged therewith. To confine the magistrate and officers to their respective jurisdictions is, in my opinion, in no respect to conflict with any clause in the treaty, but in harmony with it, and in furtherance of a proper and discreet execution of its stipulations.\*

But assuming the requisition right, and that the magistrate had jurisdiction, we must consider the third point. The question here raised was argued as if I was sitting in the character of a court of review or error on the decision of the magistrate on the facts proved before him. Such, I think, is not the case. The duty of determining on the sufficiency of the evidence is cast on the magistrate or other officers. He is the person to be satisfied that the evidence justifies the apprehension and committal for trial of the persons accused. The amount and value of that evidence is for his determination. A judge of the Supreme Court might think the evidence of guilt strong and of innocence weak, or *vice versâ*, but the law has vested the magistrate with the power of weighing and deciding on the effect of the evidence, and it is the result on his mind that is to determine its sufficiency or insufficiency. It is a judicial discretion with which he is vested, which, I think, is not open to question on habeas corpus, and cannot be taken from him and assumed by a judge of the Supreme Court. If it was manifestly apparent that the evidence showed that no offence had been committed, or that the party was unquestionably innocent, and therefore there was really no matter of fact or law to be tried, no matter in which the magistrate could exercise a discretion or judgment, then the case would be very different; but is such the case before us? That the vessel was seized and by force taken from the captain and crew on the high seas is not disputed. Unanswered this is a *prima facie* case of piracy, and the burthen is cast on the accused of justifying this apparently wrongful act. The justification set up is that hostilities were existing between the United States and the Confederate States of America, and this seizure was made under a commission from or by authority and on behalf of the Confederate States, and that therefore it was an act of legitimate warfare and not of a piratical character. This, on the other hand, is denied, and it is alleged that the claim to act under the authority of the Confederate States is mere pretence and colour to disguise and cover an illegal depredation. The object of privateering in general is not, as Mr. Kent observes, fame or chivalric warfare, but plunder and profit; but at the present day the rights of private armed vessels and private belligerents cannot be doubted. Unless restrained by treaty stipulations the right to commission private armed vessels is, by the laws of nations, esteemed a legitimate means of destroying the commerce of an enemy, and captures made by private armed vessels of one belligerent, even without a commission, though not in self defence, are not regarded as piratical either by their own Government or by the other belligerent state. It does not indeed vest the enemy's property thus seized in the captors, but the seizure would be declared a prize of war to the Government of the captors; and it is equally true that neutrals taking commissions as privateers and acting on them are likewise free from the imputation of piracy.

They may make themselves amenable for the violation of the laws of their own country, and may denude themselves of the right to claim her protection to shield them from the consequences of their acts, but they cannot be dealt with by the belligerent against whom they are acting as pirates. But as neutrals they stand in a very different position from belligerents. Belligerents, we have seen, may make captures

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\* The Imperial statute 12 & 13 Vict. c. 96., passed in 1849, "to provide for the prosecution and trial, in Her Majesty's colonies, of offences committed within the jurisdiction of the Admiralty," and giving colonial magistrates jurisdiction in such cases, was not cited before the police magistrate, nor brought to his honour Mr. Justice Ritchie's notice in the argument in this case. It would appear to affect so much of his honour's decision as relates to the jurisdiction of the police magistrate of Saint John in cases of piracy, without however affecting the conclusion finally arrived at; that being based on defects in the requisition and other proceedings, and the construction of the Imperial statute 6 & 7 Vict. c. 76., as well as the want of jurisdiction in the magistrate.—*Reporter*.



without commissions. Neutrals can only protect themselves by commissions from, or by acting under authority of the belligerent Government, or on board commissioned vessels, or under duly authorized officers. They cannot, without any commission or authority, fit out in a neutral country a hostile expedition against a power at peace with such country, and under pretence of acting in the name of or on the behalf of a belligerent power, commit acts on the high seas that would, unless protected by belligerent rights, be acts of piracy, and not be held responsible criminally for such acts. And therefore it behoves persons not belligerents but subjects of a neutral power engaging in acts of hostility, if they wish to escape the imputation of criminality, to be well assured when they depredate on the shipping of a nation at peace with the one to whom they owe allegiance and in opposition to the municipal laws and neutral policy of their own Government, and in direct defiance of the express proclamation of their Sovereign, that they are acting under the authority of a commission which will bear the test of a strict legal scrutiny. In the present case, can it be said that this was made out so clearly and unequivocally that there was nothing for the magistrate to deliberate on, nothing for a superior court or jury to try? Without expressing the slightest opinion of the guilt or innocence of the parties, or the probable result of a trial either before a judicial tribunal in this province or in the United States, it will only be necessary to refer generally to the evidence on behalf of the prisoners to show that the case is by no means so entirely free from doubt or question as their counsel assumed. Instead of showing that they were acting under a regular commission, or were belligerents themselves, or that the expedition proceeded from the Confederate States of America, it appears, so far as there is evidence of the nationality of the parties engaged, that they were British subjects, that the plot to seize the vessel was concocted in this city, that the commission under which they claim to act was not directed to any of the persons engaged in this capture, nor were any of them named in it, nor did it relate in any way to seizure under circumstances such as the present—that it was a commission dated 27th October 1862, whereby the vessel “Retribution,” Thomas B. Power, commander, was authorised to act as a private armed vessel for the Confederate States on the high seas against the United States, on the back of which commission is an endorsement dated 21st November 1862, signed Thomas B. Power, whereby he transfers the command of the schooner “Retribution” to John Parker. The commission is proved by proof of the signature of Jefferson Davis, President of the Confederate States, and of the Seal of the Confederate States attached thereto; but the endorsement is proved by the slightest evidence of the handwriting of the subscribing witness. There is no evidence of who this John Parker was. It was proved that at Nassau a Nova Scotian named Vernon G. Locke, who had been residing for the last 20 years in the United States, and whose family is now living at Fayetteville, was last summer in the month of May at Nassau, in command of the “Retribution,” and that he was there received and recognized as her captain, under the name of John Parker. Whether he was really the John Parker named on the back of the commission, or assumed that name with a view of representing that person was not shown, except as an inference might be drawn from the facts one way or other. This commission was produced at the Lower Cove meetings by Locke alias Parker, but there is not a particle of evidence as to the whereabouts of the “Retribution,” at that time or since, or that he was then captain of her. In fact the only evidence of her at all was her being at Nassau in May last summer. Whether she was in existence or not, or, if in existence, where she was, or under whose command when this expedition was planned and executed, did not appear; nor was there any evidence to show that any of the parties engaged in the capture had ever been on board the “Retribution,” or in any way connected with her. On the contrary, Braine, who would appear to have been in charge of the capturing party, described himself on board the “Chesapeake,” and was addressed by the title of colonel. Locke, alias Parker, did not proceed on the expedition (though he boarded her subsequently off Grand Manan and took the command), but addressed an order to “Lieutenant-Commanding John Clibbon Braine,” requiring him to proceed to New York with First Lieutenant H. A. Parr, Second Lieutenant David Collins, Sailing Master Tom Sayers, one engineer, and crew of 22 men; engage passage on board the steamer, using his own direction as to time and place of capture, to act towards the crew and passengers in accordance with President’s instructions, and as circumstances permit, bring his prize to Grand Manan for further orders. This is signed John Parker, captain C. S. privateer “Retribution.” There is no evidence of what these parties were officers, or how or by whom they were appointed, with the exception of David Collins, and he appears to have got his commission of Second Lieutenant from John Parker. It is in these words :

To David Collins,

Reposing confidence in your zeal and ability, I do hereby authorise and commission you to hold and assume the rank of Second Lieutenant, and this shall be your authority for any act, under order from me, against the Government of the United States, or against the citizens of the United States, or against the property of either, by sea or by land, during the continuance of hostilities now existing. This commission to bear date from the 1st December, A.D. 1863.

(Signed) JOHN PARKER.

Had this commission been from Jefferson Davis it might have been easily understood and possibly free from question; but issued by a British subject to a British subject, in the Queen's dominions, it is certainly a proceeding, to say the least of it, novel in its character and fairly challenging investigation. It is true evidence was offered of military men attached to the Confederate army, showing that in operations on land officers commissioned to discharge a particular duty had, by the practice of the Confederate service, authority to appoint others under them to act as officers to carry out such duty, and that such was a recognized custom of the service; but the practice pursued by officers unquestionably in the service of the Confederate States in the field, actually engaged in the war of the hostile territories, is not quite conclusive as to British subjects and British territory. But be all this as it may, can it be deemed that the proceeding, if justifiable, was not, in many of its features, most irregular, and the *prima facie* case before the magistrate being on the one hand clear, and the alleged justification presenting the irregularities and peculiarities, it did, and being open to so much question, can the justice be fairly said to have exceeded his discretion if the result at which he arrived decided that the evidence was such as would justify their apprehension and committal for trial had the alleged crime been committed here, leaving the prisoners to substantiate their defence before a competent court where the legal points could be properly determined, and where the questions of intent and of fact or inference would be submitted to and determined by jury. As at present advised, I cannot say that in this particular the magistrate arrived at a wrong conclusion, nor do I think the magistrate did wrong in refusing to go behind the Governor's warrant and determine on the sufficiency of the requisition to His Excellency. Over that matter, I think, the statute gives the justice no jurisdiction or authority.

Before leaving this branch of the case I cannot refrain from expressing my deep regret that any inhabitants of New Brunswick, being British subjects, should have been seduced from their clear duty to their Sovereign, and have availed themselves of the hospitality of a friendly power by going into its territory and obtaining a passage from one of its ports, on board one of its ships, and, by a stratagem possibly justifiable by the usages of war in a belligerent, have risen against an unarmed crew peaceably engaged in their lawful calling, and despoiled them of the property under their charge, and that too with an amount of violence resulting in the death of one of the crew, which, under the evidence in this case, would not seem to have been necessary for the accomplishment of the end sought to be attained—an example, I may be permitted to add, I earnestly trust will not be followed by any of Her Majesty's loyal subjects in this province.

As to the 4th objection. The commitment first sets out, as we have seen, the warrant of His Excellency, which alleges the parties to be charged upon the oaths of Isaac Willett and Daniel Henderson, with having committed the crimes of piracy and murder on the high seas within the jurisdiction of the United States of America, on the 7th December then instant. Now where are these averments obtained by the legal adviser of the Governor, who I presume drafted the warrant. Reverting to what has been said as to the requisition, not a word is alleged by the counsel of this crime of murder, and not a statement made by him that either piracy or murder had been committed within the jurisdiction of the United States. No doubt, the legal gentleman who drew the warrant felt the difficulty of the want of a distinct charge, and the absolute necessity of the averment that the crime was committed within the United States of America; but as there was neither of these particulars in either of the letters of the consul, he no doubt from necessity resorted to the affidavit transmitted therewith of Willett and Henderson and from the facts stated by them transformed an affidavit intended, as the consul says, "to be presented to His Excellency, in case he requires evidence of the criminality of the persons charged with the crime of piracy before issuing the warrant for having them brought to trial," into a charge by Willett and Henderson of piracy and murder. The valuelessness of this document, either as a charge or verification, I have already shown; but where the allegation that the alleged offences were committed within the jurisdiction of the United States was obtained I am at a loss to conceive, for neither



the consul, nor Willett, nor Henderson say anything about it, unless it was assumed that as there could not be a requisition for an offence unless so committed, the offence alleged must necessarily have been committed within the necessary jurisdiction. Again, this warrant does not allege that the requisition was made by the authority of the United States but on behalf of the United States, by no means convertible terms, though it is true this allegation is preceded by the averment that in pursuance of and in accordance with the said treaty and act a requisition has been made, &c.

With these exceptions the warrant of His Excellency appears to be in strict conformity with the statute. Mr. Gilbert's warrant then, as we have seen, proceeds to recite that on receipt of this warrant he examined Isaac Willett under oath touching the truth of the charges set forth in said warrant and upon the evidence of the said Willett, on the 25th of December, issued his warrant for the apprehension of the persons upon the said charges; and on reference to this examination I find it is headed: "The complaint of Isaac Willett, &c., taken and sworn to this 25th day of December, 1863, before me H. T. Gilbert, &c., acting under a warrant under the hand and seal of the Hon. A. H. Gordon, &c. The said Isaac Willett being duly sworn, saith, &c." It then details with particularity the circumstances of the capture and alleges facts not before anywhere stated; namely,—the registry of the vessel in the United States of America, that the vessel at the time of capture was on the high seas, about 20 miles N.N.E. of Cape Cod, in the United States of America, and it avers a malicious, wilful, felonious, and piratical assault on, and putting in bodily fear and danger of their lives, the captain and mariners, and the malicious, felonious, and piratical taking possession of the vessel and cargo; and that they did then and there wilfully, maliciously, and feloniously and violently steal, take, and carry away the said cargo; and that they did with a pistol loaded with powder and leaden bullet shoot and feloniously, maliciously, wilfully, and piratically kill and murder one Orin Schaffer, the second engineer; and in the same language and manner shot at and wounded in the right knee one Charles Johnston, chief mate; and in the same language and manner shot and wounded in the chin James Johnson, chief engineer.

Now, with all respect for the police magistrate, I think this was not the proper mode of proceeding under the statute. When he received the Governor's warrant, assuming he had jurisdiction to act under it, he should have taken no fresh complaint. He should have embodied nothing in the form of a complaint or charge against the prisoners but what was contained in the warrant of the Governor; and as this was his sole authority to act, he should have confined himself strictly within its requirements, which was simply in the first instance to aid in apprehending the persons accused which he should have done by issuing his warrant reciting the Governor's warrant, the charge therein contained against the prisoners, the requirement imposed on him thereby, and commanding the apprehension of the persons named therein, and should not have received a new complaint or introduced new charges or new matter against the accused. The correctness of this view will, I think, be confirmed by reference to the Imperial Act 8 and 9 Victoria, chap. 120., passed 8th August 1845, and the forms there given.

Having so examined Isaac Willett, the final commitment recites that upon the evidence of the said Isaac Willett, and in pursuance of the Act of Assembly, he issued his warrant directing the apprehension of the parties to answer, not the charges in the Governor's warrant, but the complaint of Isaac Willett, made on oath, for having, &c. in the words which I before mentioned, to be dealt with according to law, the said complaint having been made and taken and this warrant having been issued in pursuance of a warrant under the hand and seal of the Governor, &c., in which, however, I am constrained to differ from the learned police magistrate, the warrant of the Governor not authorising the taking of such complaint nor the arresting the parties to be dealt with according to law, but in the words of the statute to be delivered up to justice according, &c., and, had an application been made to discharge the prisoners while detained under this warrant, I do not see how it could have been successfully resisted, Besset's case, 6, Q. B. 481, being a direct authority against it on one point. That was the first decision under the French Convention Act, 6 and 7 Vict., chap. 75., which is in the same words as the American Treaty Act we are now considering. The warrant of the Lord Mayor there set out that the constable, &c. should convey and deliver into custody the body of J.B. being charged before him, &c., for that the said J.B. is accused of having committed in France the crime of fraudulent bankruptcy, as appears by the warrant of arrest issued by a competent judge in France and duly authenticated before me, and as also appears by the warrant of one of Her Majesty's Principal Secretaries of State requiring me to take cognizance of such crime, &c. It then avers proof of the crimes, and the warrant commits the prisoner until he should be discharged by due course of

law, which is the effect under this commitment under the words, to be dealt with according to law. But the court held the warrant bad upon the ground that, as the commitment was under a special statutory authority, the terms of the commitment must be special and exactly pursue that authority, acting on and recognizing the authority of *Mash's case*, 2 Wm. Bl. 806, where it is laid down that the true distinction is that when a man is committed for any crime, either at common law or created by Act of Parliament, for which he is punishable by indictment, then he is to be committed until discharged by due course of law, but when it is in pursuance of a special authority the terms of the commitment must be special and exactly pursue that authority.

The commitment then proceeds to aver that the prisoners having been brought before the justice under the warrant, and he having proceeded to the investigation of the charge of piracy charged against them, and upon examination of the witnesses under oath touching the offence of piracy, and upon the evidence before him, so under oath, he did, under the Act of Parliament, require and command the said constable to convey the prisoners to the common gaol, and deliver each of them to the keeper thereof upon the charge of piracy, for that they having on the 7th day of December, &c., and then proceeds to recapitulate the particulars of the charge in the complaint made before him by Isaac Willett, omitting the felonious, &c., murder and shooting, there to remain till delivered pursuant to the requisition aforesaid. On referring to the examinations themselves, we find the charge on which the examination proceeded was of an offence which it alleges took place on the high seas, about 20 miles N.N.E. of Cape Cod, in the United States of America, and within the jurisdiction of the United States of America, and the circuit courts thereof, against the laws of the United States of America, and the statutes of the United Kingdom of Great Britain and Ireland. So we see that at every stage of these proceedings the charge assumes a different phase.

In the first instance, the consul simply presents the complaint as that certain persons were believed to be guilty of the crime of piracy. The Governor's warrant puts it as a charge of piracy and murder, on the high seas, within the jurisdiction of the United States of America, on the complaint of Willett and Henderson. The complaint before the police magistrate is the complaint of Willett alone, and alleges the crimes of piracy and murder in the United States of America, and adds the felonious shooting and wounding of engineer and mate, and felonious stealing of the cargo. And on the examination before Mr. Gilbert there is the addition of the crime being within the jurisdiction of the circuit courts of the United States, and being contrary to the laws of the United States of America and the statutes of Great Britain and Ireland. But independent of these discrepancies, which would seem to me difficult to reconcile, or on legal principles to account for, there is, to my mind, a still more substantial objection to this warrant. This is the final commitment of the accused to gaol, there to remain until delivered pursuant to the requisition. But after examination of the witnesses, and before the committal, there was something to be done, an all-important duty to be discharged, which I cannot discover from the warrant or from any of the proceedings before me, and I can look to nothing else to have been performed, and which, if done, I think should clearly, unequivocally, and unambiguously appear on the face of the warrant, which it manifestly does not, and that is, that after hearing and considering the evidence, the justice determined and adjudicated that he deemed the same sufficient according to the laws of this province to justify the apprehension and committal for trial of the prisoners, if the crime had been committed within this province. Without such an adjudication, the warrant of commitment could not issue, and without such an adjudication appearing on the face of it when issued, I think the warrant bad, there being without it a want of jurisdiction shown to issue the warrant, or perhaps rather a want of jurisdiction to sustain it, and this view is confirmed by reference to 8 & 9 Vict. chap. 20., before referred to, for even there where a statutory form is given to be used by the police magistrate of the metropolis, the adjudication is set forth. The form is given thus: "Be it remembered that on, &c., A.B., &c. is brought before me, J.P., &c., and is charged before me for that he, the said A.B., on, &c., within the jurisdiction of the United States of America did (here state the offence), and forasmuch as it has been shown to me upon such evidence as by law is sufficient to justify the committal to gaol of the said A.B., pursuant to an Act passed in the seventh year of the reign of Her Majesty, entitled, &c., that the said A.B. is guilty of the said offence, this is therefore to command, &c." The cases to be found bearing on this point lay down the principle very clearly, some of which I will quote. In *re Peerless*, 1 Q. B. 152. This was a warrant setting forth a conviction—Denman, C. J., says: "The magistrate having no jurisdiction except by the express statutory enactment, the offence is not here described sufficiently to show jurisdiction." Per Littledale, J.: "I do not say that this may not be a good conviction



“ upon which a good warrant might be framed, but I think this warrant clearly bad for not showing jurisdiction. In what way it is that justices have jurisdiction, ought to appear by the warrant. I found myself on Lord Tenterden’s judgment in *Kite and Lane’s case*, 1 B. and C. 101.” And Coleridge, J., says: “ By a legal warrant, I mean a warrant which upon the face of it shows a right to detain, and that right cannot exist unless there be jurisdiction in the magistrates. To deny that this must appear upon the face of the proceedings is to call in question one of the most important rules of the Criminal Law.” In *Kite and Lane’s case* referred to, Abbot, C. J., says: “ It is a first principle as to all acts done by magistrates that the jurisdiction should appear on the face of their proceedings.” And Best, J., says: “ It is a settled principle that penal statutes, and such as create new jurisdiction shall receive a strict construction. Nash’s case, 4th B. and A. 295, was the case of a warrant issued under the 57th George III. cap. 87. sec. 6, by which Act, in case any person found on board a vessel liable to forfeiture under 45 George 3. cap. 121., be fit and able to serve His Majesty in his naval service he shall, upon such proof as by the said Act of the 45th year aforesaid is required, be committed by such justice to prison, to answer such information and abide such judgment, &c.” Abbot, C. J., says: “ This Act of Parliament of the 57th year of George 3. cap. 87, is one highly beneficial in preventing frauds upon the revenue, but at the same time, inasmuch as it trenches very strongly on the liberty of the subject, we must take care that its provisions are strictly pursued.” And again, “ these circumstances stated in the introductory part of this return seem to me quite sufficient to warrant this commitment, and if it had been stated upon due proof of the matters before mentioned the prisoner was committed, I should have thought it sufficient.” And per Holroyd, J.: “ The power of the magistrate to commit depends on the proof before him, and the rule is, that where a limited authority is given it must be shown to have been strictly pursued.” And in *Christy v. Unwin*, 11 Ad. and El. 377, where the validity of an order made by the Lord Chancellor under 6th George 4. chap. 16. sec. 18. was questioned, it was held that the order must show on the face of it whatever was necessary to give jurisdiction. And Coleridge, J., says: “ We cannot intend for or against the order but must decide according to the words. However high the authority may be where a statutory power is exercised, the person who acts must take care to bring himself within the terms of the statute. Whether the order be made by the Lord Chancellor or by a justice of the peace, the facts which give the authority must be stated.”

This case is, I believe, the first under the treaty and Act of Parliament that has called for judicial investigation in this province, and as points of a novel, certainly of a peculiar, and I may say of a delicate, certainly of an important character have been raised, I have endeavoured to give the case the most careful consideration, and in view of the possibility of this decision becoming the subject of discussion in other quarters, I have, to prevent misapprehension, felt it right, though at the risk of subjecting myself to the charge of unnecessary prolixity, to place on the face of my judgment, at length, the documents and facts necessary to enable all interested in the matter who have not access to the papers before me, or who may not have heard the arguments, correctly to understand the points raised and the reasons for the conclusion at which I have arrived.

In the prompt manner in which His Excellency the Lieutenant-Governor granted his warrant, and in the determination of the police magistrate on the facts of the case, the Government of the United States cannot fail, I think, to discern the determination of the Queen’s representative and her subordinate officers faithfully and honourably to carry out the treaty entered into between the respective Governments of the United States and Great Britain; and the present decision, the result of my own judicial convictions, being, I believe, in conformity with the legal authorities of the United States, individually I might hope it would commend itself to the United States Government, but whomsoever it may please or displease must be to me, judicially, a matter of indifference. The only duty I have to discharge is to my Sovereign, to the people of this province, and to my own conscience. That duty is, faithfully, to the best of my humble abilities, impartially, to declare the law as I believe it to be, wholly regardless of consequences.

This I have honestly endeavoured to do, and the result of my judgment is, that for the reasons set forth, the proceedings before me, and the warrant of commitment, returned to me by the sheriff of the city and county of Saint John, do not justify the detention in custody of the prisoners, whose imprisonment I therefore declare illegal; and I do by this my order require the immediate discharge from prison of the said David Collins, James McKinney, and Linus Seely, under the said warrant and commitment;

and as it appears to me that the sheriff of the city and county of Saint John, the keeper of the gaol of the said city and county, acted upon the warrant or commitment of the said H. T. Gilbert, according to the requirements of the same, without malice or evil intent, I do, by virtue of the power conferred on me by the Act of Assembly, exempt the said keeper of the said gaol from all civil suits which may be brought against him for or by reason of having acted on the said warrant or commitment.

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## APPENDIX.

### A.

#### REQUISITIONS OF THE UNITED STATES CONSUL.

Saint John, N.B., Dec. 22nd, 1863.

Hon. S. L. Tilley, Provincial Secretary.

SIR,

I BEG leave to transmit the depositions of the captain and second mate of the steamer "Chesapeake," to be presented to His Excellency, in case he requires evidence of the criminality of the persons charged with the crime of piracy, before issuing the warrant for having them brought to trial. It is to be sincerely hoped that no obstacles will be thrown in the way of bringing those charged with so grave an offence to justice.

We had believed until this late hour that a requisition before the Executive would not have been required in the first instance.

I am, &c.,  
(Signed) J. Q. HOWARD, U. S. Consul.

#### UNITED STATES CONSULATE.

St. John's, New Brunswick, December 22nd, 1863.

Hon. S. L. Tilley, Provincial Secretary.

SIR,

I HAVE the honour to address, through you, a communication to the Lieutenant-Governor of the province, for the purpose of requesting that His Excellency will be pleased to use the authority vested in him by the Act of Parliament for giving effect to what is known as the "Ashburton Treaty," to the end that certain offenders may be apprehended and delivered up to justice.

You will please make known to His Excellency, that as an officer of the Government of the United States, I am authorized by the Executive Department of the Government to make a requisition upon him, as the officer administering the government of the province, in order that certain persons believed to be guilty of the crime of piracy may be brought before the proper officers of justice, so that the evidence of their guilt or innocence may be heard and considered. I have, therefore, the honour to request, that in accordance with the provisions of the said Acts of Parliament, His Excellency will by warrant signify that a requisition has been made for the apprehension of John C. Braine, H. C. Brooks, David Collins, John Parker Locke, Robert Clifford, Linus Seely, George Robinson, Gilbert Cox, Robert Cox, H. A. Parr, and James McKinney, and require that all justices of the peace and other magistrates, within the jurisdiction of this province, shall aid in apprehending the above-named persons, accused of the crime of piracy, for the purpose of having them brought to trial.

I am, &c.,  
(L.S.) (Signed) J. Q. HOWARD, U. S. Consul.

I HEREBY certify that the foregoing are true copies of the original letters and requisition of J. Q. Howard, Esq., United States consul, at the city of Saint John, and are now on file in my office.

(Signed) S. L. TILLEY, Prov. Secretary.

Secretary's Office, 29th January 1864.

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## B.

Extract from the treaty between Her Majesty and the United States of America, signed at Washington, August 9th, 1842; commonly known as the "Ashburton Treaty."

## "ARTICLE X.

"It is agreed that Her Britannick Majesty and the United States shall, upon mutual requisitions by them or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found within the territories of the other:—provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive."

## C.

## "6 &amp; 7 VICT. CAP. LXXVI.

"An Act for giving effect to a Treaty between Her Majesty and the United States of America for the apprehension of certain offenders.

"Whereas by the tenth article of a treaty between Her Majesty and the United States of America, signed at Washington on the ninth day of August in the year one thousand eight hundred and forty-two, the ratifications whereof were exchanged in London on the thirteenth day of October in the same year, it was agreed that Her Majesty and the said United States should, upon mutual requisitions by them or their ministers, officers, or authorities respectively made, deliver up to justice all persons who being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either of the high contracting parties, should seek an asylum or should be found within the territories of the other; provided that this should only be done upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged should be found would justify his apprehension and commitment for trial if the crime or offence had been there committed, and that the respective judges and other magistrates of the two Governments should have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, so that he might be brought before such judges or other magistrates respectively, to the end that the evidence of criminality might be heard and considered, and if on such hearing the evidence should be deemed sufficient to sustain the charge, it should be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant might issue for the surrender of such fugitive, and that the expense of such apprehension and delivery should be borne and defrayed by the party making the requisition and receiving the fugitive; and it is by the eleventh article of the said treaty further agreed, that the tenth article herein-before recited should continue in force until one or other of the high contracting parties should signify its wish to terminate it, and no longer: And whereas it is expedient that provision should be made for carrying the said agreement into effect: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in case requisition shall at any time be made by the authority of the said United States, in pursuance of and according to the said treaty, for the delivery of any person charged

with the crime of murder, or assault with intent to commit murder, or with the crime of piracy, or arson, or robbery, or forgery, or the utterance of false paper, committed within the jurisdiction of the United States of America, who shall be found within the territories of Her Majesty, it shall be lawful for one of Her Majesty's Principal Secretaries of State, or in Ireland, for the Chief Secretary of the Lord Lieutenant of Ireland, and in any of Her Majesty's colonies or possessions abroad, for the officer administering the government of any such colony or possession, by warrant under his hand and seal, to signify that such requisition has been so made, and to require all justices of the peace and other magistrates and officers of justice within their several jurisdictions to govern themselves accordingly, and to aid in apprehending the person so accused, and committing such person to gaol, for the purpose of being delivered up to justice, according to the provisions of the said treaty; and thereupon it shall be lawful for any justice of the peace, or other person having power to commit for trial persons accused of crimes against the laws of that part of Her Majesty's dominions in which such supposed offender shall be found, to examine upon oath any person or persons touching the truth of such charge, and upon such evidence as according to the laws of that part of Her Majesty's dominions would justify the apprehension and committal for trial of the person so accused if the crime of which he or she shall be so accused had been there committed it shall be lawful for such justice of the peace, or other person having power to commit as aforesaid, to issue his warrant for the apprehension of such person, and also to commit the person so accused to gaol, there to remain until delivered pursuant to such requisition as aforesaid.

II. "Provided always, and be it enacted, that in every such case, copies of the depositions upon which the original warrant was granted, certified under the hand of the person or persons issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended."

[The remaining sections of the Act are not material to the decision in this case.]

#### D.

WARRANT issued by the LIEUTENANT-GOVERNOR under the TREATY and STATUTE.

New Brunswick.

By His Excellency the Honourable Arthur Hamilton Gordon, C.M.G., Lieutenant-Governor and Commander-in-Chief of the province of New Brunswick, &c., &c., &c.

[Seal.]

Arthur H. Gordon.

To all and every the justices of the peace and officers of justice within the province of New Brunswick, greeting:

Whereas in and by an Act of Parliament made and passed in the sixth and seventh years of the reign of Her Majesty Queen Victoria, entitled "An Act for giving effect to a Treaty between Her Majesty and the United States of America, for the apprehension of certain offenders," it is among other things enacted, that in case requisition shall at any time be made by the authority of the said United States, in pursuance of and according to the said treaty for the delivery of any person charged with the crime of murder, or assault with intent to commit murder, or with the crime of piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of the United States of America, who shall be found within the territories of Her Majesty, it shall be lawful for one of Her Majesty's Principal Secretaries of State, or in Ireland, for the Chief Secretary of the Lord Lieutenant of Ireland, and in any of Her Majesty's colonies or possessions abroad, for the officer administering the government of any such colony or possession by warrant under his hand and seal to signify that such requisition has been so made, and to require all justices of the peace and other magistrates and officers of justice within their several jurisdictions to govern themselves accordingly, and to aid in apprehending the person so accused, and committing such person to gaol for the purpose of being delivered up to justice according to the provisions of the said treaty; and thereupon it shall be lawful for any justice of the peace or other person having power to commit for trial persons accused of crimes against the laws of that part of Her Majesty's dominions in which such supposed offender shall be found, to examine upon oath any person or persons touching the truth of such charge, and upon such evidence as according to the laws of that part of Her Majesty's dominions would justify the apprehension and committal for trial of the



person so accused of the crime of which he or she shall be so accused had been there committed, it shall be lawful for such justice of the peace, or other person having power to commit as aforesaid, to issue his warrant for the apprehension of such person, and also to commit the person so accused to gaol, there to remain until delivered pursuant to such requisition as aforesaid.

And whereas, in pursuance of and in accordance with the said treaty and Act, a requisition has been made to me on behalf of the said United States, by J. Q. Howard, consul of the said United States at the city of Saint John, in this province, stating that John C. Braine, H. C. Brooks, David Collins, John Parker Locke, Robert Clifford, Linus Seely, George Robinson, Gilbert Cox, Robert Cox, H. A. Parr, and James McKinney, charged upon the oath of Isaac Willett and Daniel Henderson with having committed the crimes of piracy and murder on the high seas, within the jurisdiction of the said United States of America, on the seventh day of December instant, are, or some of them are, now in the city of Saint John, within this province, and requesting that the said John C. Braine, H. C. Brooks, David Collins, John Parker Locke, Robert Clifford, Linus Seely, George Robinson, Gilbert Cox, Robert Cox, H. A. Parr, and James McKinney may be delivered up to justice according to the provisions of the said treaty. Now know ye, that pursuant to this power in me vested in and by the said Act of Parliament, I do hereby, by this warrant under my hand and seal, signify that such requisition has been so made, and hereby require and command all justices of the peace and other magistrates and other officers of justice of this province, within their several jurisdictions, to govern themselves accordingly and to aid in apprehending the said John C. Braine, H. C. Brooks, David Collins, John Parker Locke, Robert Clifford, Linus Seely, George Robinson, Gilbert Cox, Robert Cox, H. A. Parr, and James McKinney, so accused, and committing them, the said John C. Braine, H. C. Brooks, David Collins, John Parker Locke, Robert Clifford, Linus Seely, George Robinson, Gilbert Cox, Robert Cox, H. A. Parr, and James McKinney to gaol for the purpose of being delivered up to justice according to the provisions of the said treaty. And hereof they will not fail at their peril.

Given under my hand and seal at Fredericton, in this province of New Brunswick, this twenty-fourth day of December, in the twenty-seventh year of Her Majesty's reign, Anno Domini 1863.

By His Excellency's command,  
(Signed) S. L. TILLEY.

#### E.

#### COMPLAINT OF CAPTAIN WILLETT, taken by the POLICE MAGISTRATE OF SAINT JOHN, the 25th December 1863.

City and county of Saint John,—to wit :

The complaint of Isaac Willett, of the state of New York, in the United States of America, master mariner, now in the city of Saint John, aforesaid, taken and sworn to this twenty-fifth day of December, in the year of our Lord one thousand eight hundred and sixty-three, at the city aforesaid, before me Humphrey T. Gilbert, Esq., police magistrate for the city of Saint John, and one of Her Majesty's justices of the peace for the city and county of Saint John, acting under a warrant under the hand and seal of His Excellency the Honourable Arthur H. Gordon, Lieutenant-Governor and Commander-in-Chief of the province of New Brunswick, bearing date the twenty-fourth day of December one thousand eight hundred and sixty-three, and made and issued in pursuance of the Act of the Imperial Parliament, entitled an Act for giving effect to a Treaty between Her Majesty and the United States of America, for the apprehension of certain offenders; such warrant directed to all and every the justices of the peace, and officers of justice within the province of New Brunswick.

The said Isaac Willett being duly sworn, saith as follows : That he, this deponent, on the seventh day of December one thousand eight hundred and sixty-three, was master in charge and command of the American passenger steamboat or vessel "Chesapeake," and owned by Henry B. Cromwell, of the state of New York, in the United States of America, merchant. That the said steamboat or vessel is duly registered in pursuance of the United States laws for the registering of ships or vessels, and was so registered on the seventh day of December instant. That the said steamboat or vessel was of the value of the sum of sixty thousand dollars and upwards of current money of New Brunswick, and had on a board a valuable cargo of the value of eighty thousand dollars

and upwards of like current money, and there were at the time a number of passengers on board of the said ship or vessel. That the said vessel or steamboat left the port of New York on the fifth day of December instant, being then duly registered as aforesaid, with the cargo of the value aforesaid on board, and a number of passengers on a voyage from said port of New York to the port of Portland, in the said United States, this deponent being in command of the said steamboat or vessel. That John C. Braine, H. C. Brooks, David Collins, Robert Clifford, Linus Seely, George Robinson, Gilbert Cox, Robert Cox, H. A. Parr, and James McKinney, having taken passage on board of the said steamboat or vessel, left the said port of New York, in and on board the said steamboat or vessel, as passengers on the said voyage. That the said steamboat or vessel proceeded on her said voyage, and while on the said voyage this deponent being in command of said steamboat or vessel, the said vessel then being on the high seas about twenty miles north-north-east of Cape Cod, in the United States of America, on the seventh day of December instant, certain passengers on board the said vessel, namely, the said John C. Braine, H. C. Brooks, David Collins, Robert Clifford, Linus Seely, George Robinson, Gilbert Cox, Robert Cox, H. A. Parr, and James McKinney, so being passengers on board the said steamboat or vessel, with force and arms, on the high seas, in and on board the said steamboat or vessel called the "Chesapeake," in a certain place upon the high seas, distant about twenty miles from Cape Cod aforesaid then being, in and upon this deponent and upon others the mariners then navigating the said vessel upon the said voyage, maliciously, wilfully, feloniously, and piratically did make an assault, and this deponent and others, the said mariners, then and there piratically, feloniously, wilfully, and maliciously, did put in bodily fear and danger of their lives on the high seas aforesaid, and then and there maliciously, wilfully, feloniously, and piratically took possession of the said steamboat or vessel and the cargo thereof; the said steamboat or vessel being under the charge and command of this deponent, and there and then with force and arms took the said steamboat or vessel, and cargo of said vessel, from the care and custody of this deponent and the said mariners, against the will of this deponent and the said mariners, and then and there with force and arms upon the high seas aforesaid, in the place aforesaid, and within the jurisdiction of the United States of America, piratically, wilfully, maliciously, and feloniously and violently did steal, take, and carry away the said vessel and cargo, and the said named persons did then and there with a pistol loaded with powder and leaden bullets shoot at, and feloniously, maliciously, wilfully, and piratically kill and murder one Orin Schaffer, the second engineer, he being then a hand employed in and on board the said steamboat or vessel on the voyage aforesaid, and the said named persons having so taken possession of the said steamboat or vessel, put this deponent and others the crew of said vessel from the steamboat or vessel into and on board a pilot boat, and the said named persons also then and there wilfully, feloniously, maliciously, and piratically, with a pistol loaded with powder and leaden bullets, shot at and wounded in the right knee and left arm one Charles Johnston, he, the said Charles Johnston, then and there being chief mate of the said steamboat or vessel, and also then and there with a pistol loaded with powder and leaden bullets wilfully, feloniously, maliciously, and piratically shot at and wounded in the chin one James Johnson, he, the said James Johnson, then and there being chief engineer in and on board the said vessel, and this deponent further saith that the said named persons having so taken possession of the said steamboat or vessel, they, the said named persons, proceeded from the said place where the said offences were committed, to and up the Bay of Fundy, and that having proceeded to a place on the high seas about fifteen miles below Dipper Harbour, in the province of New Brunswick, one John Parker Locke came to the said steamboat or vessel and boarded her, and immediately took charge and command of the said steamboat or vessel and cargo, against the will of deponent and others the mariners of the said ship or vessel. That until the said John Parker Locke came on board of the said vessel the said John C. Braine appeared to have command of the persons who so piratically took possession of the said ship or vessel as aforesaid, and this deponent further saith that he verily believes the said John C. Braine is now in the city of Saint John, in the province of New Brunswick.

(Signed)

ISAAC WILLETT.

Sworn at the city of Saint John, in the city and county of Saint John,  
this 25th day of December, A.D. 1863, before me,

(Signed)

H. T. GILBERT, P. M. and J.P.



## F.

## WARRANT FOR THE APPREHENSION OF THE PRISONERS, ISSUED BY THE POLICE MAGISTRATE.

*To any constable or peace officer of the city, or city and county of Saint John.*

Apprehend John C. Braine, H. C. Brooks, David Collins, Robert Clifford, Linus Seely, George Robinson, Gilbert Cox, Robert Cox, H. A. Parr, and James McKinney, and bring them before me or some other justice at the Police Office in the city of Saint John, to answer the complaint of Isaac Willett, of the state of New York, in the United States of America, master mariner, made on oath for having on the seventh day of December in the year of our Lord one thousand eight hundred and sixty-three, on the high seas, about twenty miles north-north-east of Cape Cod, in the United States of America, on the seventh day of December aforesaid, with force and arms, maliciously, wilfully, feloniously, and piratically made an assault upon the said Isaac Willett, and others, the mariners then on board, and in charge and command of the steamboat or vessel named the "Chesapeake," the said vessel being a vessel belonging to one Henry B. Cromwell, a citizen of the United States of America, and being of the value of sixty thousand dollars of lawful money of New Brunswick, and having on board a cargo of the value of eighty thousand dollars of like lawful money, and the said vessel being then on a voyage from the port of New York, in the United States of America, to the port of Portland, in the said United States of America, and having then and there piratically, feloniously, wilfully, and maliciously put the said Isaac Willett, and others, the crew of the said vessel, in fear and danger of their lives on the high seas aforesaid, and having then and there maliciously, wilfully, feloniously, and piratically taken possession of the said vessel and the cargo thereof, and with having then and there feloniously, wilfully, maliciously, and piratically stolen and taken the said vessel and cargo upon the high seas aforesaid, and also for having at the time and place aforesaid, feloniously, wilfully, maliciously, and piratically, upon the high seas aforesaid, killed and murdered one Orin Schaffer, in and on board the said vessel on the said voyage, and also for having at the time and place aforesaid, with force and arms, feloniously, wilfully, maliciously, and piratically assaulted and wounded one Charles Johnston, and also for having at the time and place aforesaid feloniously, wilfully, maliciously, and piratically assaulted and wounded one James Johnson, and to be dealt with according to law. The said complaint having been made and taken, and this warrant having been issued in pursuance of a warrant under the hand and seal of His Excellency the Honourable Arthur H. Gordon, Lieutenant-Governor, and Commander-in-Chief of the province of New Brunswick, bearing date the twenty-fourth day of December one thousand eight hundred and sixty-three, and made and issued in pursuance of the Act of the Imperial Parliament, entitled an Act for giving effect to a treaty between Her Majesty and the United States of America, for the apprehension of certain offenders.

Dated this 25th day of December in the year of our Lord one thousand eight hundred and sixty-three, and given under my hand and seal on the said date.

(Signed) H. T. GILBERT, [L.S.]  
Pol. Mag. & Jus. of the Peace.

## G.

## COMMISSION OF THE C. S. PRIVATEER "RETRIBUTION," AND TRANSFER TO CAPTAIN PARKER.

JEFFERSON DAVIS,

President of the Confederate States of America.

To all who shall see these presents, greeting :

Know ye, that by virtue of the power vested in me by law, I have commissioned and do hereby commission, have authorized and do hereby authorize, the vessel called the "Retribution" (more particularly described in the schedule hereunto annexed), whereof Thomas B. Power is commander, to act as a private armed vessel in the service of the Confederate States, on the high seas, against the United States of America, their ships, vessels, goods, and effects, and those of their citizens, during the pendency of the war now existing between the said Confederate States and the said United States.

This commission to continue in force until revoked by the President of the Confederate States for the time being.

Given under my hand and the seal of the Confederate States at Richmond this 27th day of October, A.D. 1862.

[L.S.]  
By the President, (Signed) JEFFERSON DAVIS.  
(Signed) J. P. BENJAMIN, Secretary of State.

Schedule of description of the vessel.

Name—Retribution.

Tonnage—150.

Armament—3 guns.

No. of crew 30.

(Endorsed.)

State of South Carolina, }  
District of Charleston. }

I hereby transfer the command of the schooner "Retribution" to John Parker.

Witness my hand and seal this twenty-first day of November 1862.

Witness (Signed) THOMAS B. POWER.  
(Signed) W. F. COLCOCK, collector.

## H.

### ORDERS FROM CAPTAIN PARKER TO LIEUTENANT BRAINE.

#### ORDERS.

To Lieutenant-Commanding John Clibbon Braine, you are hereby ordered to proceed to the city of New York and state aforesaid with the following officers; First Lieutenant H. A. Parr, Second Lieutenant David Collins, Sailing Master Tom Sayers, First Engineer Smith, and crew of 22 men. You will upon arrival there engage passage on board the steamer and use your own discretion as to the proper time and place of capture. Your action towards crew and passengers will be strictly in accordance with the President's instructions. You will, as circumstances may permit, bring your prize to the island of Grand Manan for further orders, Seal Cove Harbour if accessible.

(Signed) JOHN PARKER,  
December 2nd, 1863. Capt. C. S. Privateer "Retribution."

## I.

### COMMISSION TO DAVID COLLINS.

To David Collins.

Reposing confidence in your zeal and ability, I do hereby authorise and commission you to hold and assume the rank of Second Lieutenant, and this shall be your authority for any act, under orders from me, against the Government of the United States, against the citizens of the United States, or against the property of either, by sea or by land, during the continuance of hostilities now existing. This commission to bear date from the 1st day of December, A.D. 1863.

(Signed) JOHN PARKER.

## J.

### HEADING OF THE EVIDENCE, &c. RETURNED BY THE POLICE MAGISTRATE BEFORE THE JUDGE.

David Collins, James McKinney, and Linus Seely stand charged before me, Humphrey T. Gilbert, Esquire, police magistrate of the city of Saint John, and one of Her Majesty's justices of the peace for the city and county of Saint John, acting under a warrant under the hand and seal of His Excellency the Honourable Arthur



Hamilton Gordon, C.M.G., Lieutenant-Governor, and Commander-in-Chief of the province of New Brunswick, bearing date the twenty-fourth day of December in the year of our Lord one thousand eight hundred and sixty-three, and made and issued in pursuance of the Act of the Imperial Parliament, entitled "An Act for giving effect to a Treaty between Her Majesty and the United States of America, for the apprehension of certain offenders," such warrant being directed to all and every the justices of the peace and officers of justice within the province of New Brunswick—For that they the said David Collins, James McKinney, and Linus Seely, (together with John C. Braine, H. C. Brooks, Robert Clifford, George Robinson, Gilbert Cox, Robert Cox, and H. A. Parr, not brought up before me for examination,) did on the seventh day of December in the year of our Lord one thousand eight hundred and sixty-three, upon the high seas, about twenty miles north-north-east of Cape Cod, in the said United States of America, and within the jurisdiction of the said United States of America, and the circuit courts thereof, then being passengers in and on board a certain passenger and freight steamer called the "Chesapeake," United States of America Register, owned, belonging, and appertaining to Henry B. Cromwell, a subject of the said United States of America, whereof Isaac Willett, also a subject thereof, was master, while on a voyage from New York to Portland, in the said United States of America, with force and arms turned pirates and the said steam vessel and the apparel and tackle thereof of the value of sixty thousand dollars of lawful money of the said United States of America and of the province of New Brunswick, and a cargo owned by persons unknown of the value of eighty thousand dollars of like lawful money then and there being in the said steam vessel under the care and custody and in the possession of the said Isaac Willett as master of the said steam vessel, then and there upon the high seas aforesaid, within the jurisdiction aforesaid, about the distance of twenty miles north-north-east of Cape Cod aforesaid with force and arms from the care, custody, and possession of the said Isaac Willett and against the will of the said Isaac Willett and the crew and mariners assisting the said Isaac Willett in the navigation of the said steam vessel, piratically and feloniously did steal, take, and run away with, they the said David Collins, James McKinney, and Linus Seely being passengers on board of the said steam vessel and in and on board the same on the high seas aforesaid, against the laws of the United States of America and the statutes of the United Kingdom of Great Britain and Ireland.

## K.

### RETURN OF THE SHERIFF TO THE ORDER OF HABEAS CORPUS.

#### SUPREME COURT,

I, James A. Harding, sheriff of the city and county of Saint John, having charge of the gaol of the said city and county, do hereby certify that David Collins, James McKinney, and Linus Seely, named in the annexed order, were in the gaol of the city and county of Saint John, for safe keeping, under a warrant from H. T. Gilbert, Esq., police magistrate and justice of the peace, from the following dates:—James McKinney, from the 26th day of December last, David Collins, from the 27th day of December last, and Linus Seely, from the 1st day of January last past, except when ordered for examination by the said H. T. Gilbert, police magistrate and justice of the peace, up to 11 o'clock or thereabouts, on the morning of the 24th day of February inst., when they were taken to the office of the said H. T. Gilbert, police magistrate and justice of the peace. That they were committed to the gaol of the said city and county at mid-day of the 25th day of February inst., with the following, a copy of the commitment:—

"City and county of Saint John, to wit:—To any constable or peace officer of the city and county of Saint John, and to the keeper of the gaol thereof; you the said constable shall convey David Collins, of the city of Saint John, labourer, James McKinney, of the same place, labourer, and Linus Seely, of the same place, labourer, charged before me, Humphrey T. Gilbert, Esq., police magistrate for the city of Saint John, and one of Her Majesty's justices of the peace for the city and county of Saint John, acting under warrant under the hand and seal of His Excellency the Honourable Arthur Hamilton Gordon, C.M.G., Lieutenant-Governor and Commander-in-Chief of the province of New Brunswick, bearing date the twenty-fourth day of December in the year of our Lord one thousand eight hundred and sixty-three, and made and issued in pursuance of the Act of Imperial Parliament, intituled "An Act for giving effect to a Treaty between Her Majesty and the United States of America, for the apprehension of certain offenders," and in pursuance of and in accordance with the said treaty and Act, a requisition having been made to His Excellency the Honourable Arthur Hamilton

Gordon, C.M.G., Lieutenant-Governor and Commander-in-Chief of the province of New Brunswick, on behalf of the said United States of America, by James Q. Howard, consul of the said United States, at the city of Saint John, in the province of New Brunswick, stating that John C. Braine, H. C. Brooks, David Collins, John Parker Locke, Robert Clifford, Linus Seely, George Robinson, Gilbert Cox, Robert Cox, H. A. Parr, and James McKinney, charged upon the oath of Isaac Willett and Daniel Henderson with having committed the crimes of piracy and murder on the high seas, within the jurisdiction of the said United States of America, on the seventh day of December inst., are, or some of them, are now in the city of Saint John, within this province, and requesting that the said John C. Braine, H. C. Brooks, David Collins, John Parker Locke, Robert Clifford, Linus Seely, George Robinson, Gilbert Cox, Robert Cox, H. A. Parr, and James McKinney may be delivered up to justice, according to the provisions of the said treaty; such warrant directed to all and every the justices of the peace and officers of justice within the province of New Brunswick, and is as follows:—(Here His Excellency's warrant is inserted, vide Appendix D.)

And whereas on the receipt of the said warrant by me, and acting under and by virtue thereof and in pursuance of the said Act of Parliament, I did examine Isaac Willett under oath touching the truth of the said charges set forth in the said warrant, and upon the evidence of the said Isaac Willett in pursuance of the said Act of Parliament, I did on the 25th day of December last, issue my warrant under my hand and seal for the apprehension of the said persons upon the charges aforesaid, in the words following:—(Here is inserted warrant of apprehension, vide Appendix F.)

And David Collins, James McKinney, and Linus Seely, three of the persons in the said warrant, having been found within my jurisdiction, and having been arrested and brought before me under and by virtue of the said warrant, and I having proceeded to the investigation of the charge of piracy charged against the said named persons so brought before me, and upon the examination of the witnesses under oath touching the offence of piracy charged against the parties so brought before me, and upon the evidence before me under oath, I do hereby under the Act of the Imperial Parliament, command you the said constable or peace officers to convey the said David Collins, James McKinney, and Linus Seely to the common gaol of the city and county of Saint John, and deliver each of them to the keeper thereof upon the charge of piracy, for that they having on the seventh day of December in the year of our Lord one thousand eight hundred and sixty-three, on the high seas, about twenty miles north-north-east of Cape Cod, in the United States of America, with force and arms, maliciously, wilfully, feloniously, and piratically made an assault upon the said Isaac Willett and others, the mariners then on board and in charge and command of the steamboat or vessel named the "Chesapeake," the said vessel being a vessel belonging to the United States of America, and registered in the United States according to the laws of such states, and belonging to one Henry B. Cromwell, a citizen of the United States of America, and being of the value of sixty thousand dollars of lawful money of New Brunswick, and having on board a cargo of the value of eighty thousand dollars of like lawful money, and the said vessel being then on a voyage from the port of New York, in the United States of America, to the port of Portland, in the said United States of America, and having then and there piratically, feloniously, wilfully, and maliciously put the said Isaac Willett and others, the crew of the said vessel, in fear and danger of their lives on the high seas aforesaid, and having then and there maliciously, wilfully, feloniously, and piratically taken possession of the said vessel and the cargo thereof, and with having then and there feloniously stolen and taken the said vessel and cargo upon the high seas aforesaid, there to remain until delivered pursuant to the requisition as aforesaid. And you the said keeper shall receive and safely keep each of them upon the said charge until delivered pursuant to such requisition as aforesaid.

Given under my hand and seal at the city of Saint John, in the city and county of Saint John, this twenty-fifth day of February in the year of our Lord one thousand eight hundred and sixty-four.

[L.S.]

(Signed) H. T. GILBERT,

A justice of the peace for the city and county of Saint John, and police magistrate for said city.

And this is the cause of the detaining the said David Collins, James McKinney, and Linus Seely, whose bodies I have ready.

JAMES A. HARDING,

26th February 1864.

Sheriff of the city and county of Saint John.



“E” and “M.”

(Telegram.)

Montreal Telegraph Company, Ottawa, July 12, 1876.

By telegraph from Victoria, B.C.

To Hon. the Secretary of State.

EXTRADITION returns mailed to-day showing three (3) cases murder, one (1) attempt to murder, two (2) highway robbery, one (1) arson from British Columbia into United States; in each of these seven (7) cases prisoners were demanded, extradited, and tried on same charge without special stipulation beyond treaty. There was no case of extradition from United States into British Columbia. Returns now sent are now however incomplete and of doubtful exactness in detail for reason stated therein.

(Signed) Jos. W. TRUTCH.  
Lieut.-Governor.

“F” and “N.”

No. 21.

Province of Prince Edward Island, Government House,  
5th June 1876.

SIR,

I HAVE the honour to acknowledge the receipt of your despatch No. 1116 on 697 of the 31st ultimo, requesting a return to be transmitted to your Department, showing the cases of extradition in which this province or parties therein have been concerned, in accordance with the form forwarded in your despatch, between the 9th August 1842, the date of the Extradition Treaty between Great Britain and the United States of America, and the entry of this province into the dominion, and I beg to inform you that no cases of extradition by virtue of the treaty alluded to have ever occurred from this province and none under it from the United States to this province.

I have, &c.,

Hon. the Secretary of State,  
Ottawa.

(Signed) R. HODGSON,  
Lieut.-Governor.

“G.”

RETURN of all CASES of EXTRADITION of PRISONERS from the DOMINION OF CANADA to the UNITED STATES under TREATY between GREAT BRITAIN and the UNITED STATES, between 1st July 1867 and 1st May 1876.

| Name<br>of Prisoner.                                                                          | Charges on<br>which Prisoner was              |                                               | Date<br>of Warrant of<br>Extradition. | Charges<br>on which<br>Prisoner was<br>Tried. | Whether any Special Stipulation<br>beyond those in Treaty was required or<br>conceded by either Country as a<br>condition of Surrender. |
|-----------------------------------------------------------------------------------------------|-----------------------------------------------|-----------------------------------------------|---------------------------------------|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                               | Demanded.                                     | Extradited.                                   |                                       |                                               |                                                                                                                                         |
| Henry Martin                                                                                  | Robbery                                       | Robbery                                       | June 18, 1868                         | Information<br>not obtain-<br>able.           | None. See papers annexed, marked “B b.”                                                                                                 |
| John A. Smith                                                                                 | Forgery                                       | Forgery                                       | Sept. 28, 1868                        | ” ”                                           | ”                                                                                                                                       |
| Frank Reno and<br>C. Anderson.                                                                | Assault with<br>intent to com-<br>mit murder. | Assault with<br>intent to com-<br>mit murder. | Sept. 68                              | ” ”                                           | ” See papers annexed, marked “C c.”                                                                                                     |
| Isaac Marsh, <i>alias</i><br>J. S. Morton, and<br>C. Bullard, <i>alias</i><br>C. E. Thompson. | Robbery                                       | Robbery                                       | Dec. 19, 1868                         | ” ”                                           | ”                                                                                                                                       |
| A. Stanley, <i>alias</i><br>McDonell.                                                         | Forgery and<br>utterance of<br>forged paper.  | Forgery and<br>utterance of<br>forged paper.  | Feb. 18, 1869                         | ” ”                                           | ”                                                                                                                                       |
| Henry Miller and<br>Clay Matthews.                                                            | Robbery                                       | Robbery                                       | April 8, 1869                         | ” ”                                           | ”                                                                                                                                       |
| Henry Travers, <i>alias</i><br>Charles Alice.                                                 | Murder                                        | Murder                                        | June 7, 1869                          | ” ”                                           | ”                                                                                                                                       |
| James Elliott                                                                                 | Robbery                                       | Robbery                                       | Dec. 15, 1869                         | ” ”                                           | ”                                                                                                                                       |

RETURN of all CASES of EXTRADITION of PRISONERS from the DOMINION of CANADA to the UNITED STATES under TREATY between GREAT BRITAIN and the UNITED STATES, between 1st July 1867 and 1st May 1876—*cont.*

| Name of Prisoner.                                                      | Charges on which Prisoner was                                                              |                                       | Date of Warrant of Extradition. | Charges on which Prisoner was Tried.    | Whether any Special Stipulation beyond those in Treaty was required or conceded by either Country as a condition of Surrender. |
|------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|---------------------------------------|---------------------------------|-----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
|                                                                        | Demand.                                                                                    | Extradited.                           |                                 |                                         |                                                                                                                                |
| R. B. Caldwell                                                         | - Forgery and uttering forged paper.                                                       | Forgery and uttering forged paper.    | Mar. 8, 1870                    | Bribing United States Revenue Officers. | None. See papers annexed, marked "D d."                                                                                        |
| Dennis Cahill                                                          | - Assault with intent to commit murder.                                                    | Assault with intent to commit murder. | Jan. 15, 1870                   | Information not obtainable.             | "                                                                                                                              |
| Albert J. Gould                                                        | - No charge specified, but the prisoner spoken of as being now held in custody at Toronto. | Forgery -                             | Jan. 21, 1870                   | " "                                     | " See papers annexed, marked "E e."                                                                                            |
| George H. Hans                                                         | - Robbery -                                                                                | Robbery -                             | Dec. 5, 1870                    | " "                                     | "                                                                                                                              |
| Charles Baker, <i>alias</i> Thos. Wilson, <i>alias</i> Augustus Burke. | - Forgery -                                                                                | Forgery -                             | Oct. 28, 1871                   | " "                                     | "                                                                                                                              |
| P. F. Dennehey                                                         | - Murder -                                                                                 | Murder -                              | Oct. 7, 1872                    | " "                                     | "                                                                                                                              |
| C. H. Foster                                                           | - Uttering forged paper.                                                                   | Uttering forged paper.                | Dec. 24, 1872                   | " "                                     | " Copy of judgment in this case has already been transmitted to the Secretary of State for the Colonies.                       |
| Perry Burke                                                            | - Robbery -                                                                                | Robbery -                             | Dec. 2, 1872                    | " "                                     | "                                                                                                                              |
| Aug. Tripp                                                             | - Arson -                                                                                  | Arson -                               | Aug. 23, 1873                   | " "                                     | "                                                                                                                              |
| Emil Lowistein                                                         | - Murder -                                                                                 | Murder -                              | Sept. 20, 1873                  | " "                                     | "                                                                                                                              |
| Jos. Hokanno                                                           | - Murder -                                                                                 | Murder -                              | Sept. 29, 1873                  | " "                                     | "                                                                                                                              |
| Saml. Fraser                                                           | - Robbery -                                                                                | Robbery -                             | Jan. 5, 1874                    | " "                                     | "                                                                                                                              |
| Israel Rosenbaum                                                       | - Arson -                                                                                  | Arson -                               | Feb. 20, 1874                   | " "                                     | " Copy of judgment in this case has already been transmitted to the Secretary of State for the Colonies.                       |
| Wm. Johnson                                                            | - Uttering forged paper.                                                                   | Uttering forged paper.                | Apr. 13, 1874                   | " "                                     | "                                                                                                                              |
| Wm. Beverley                                                           | - Assault with intent to commit murder.                                                    | Assault with intent to commit murder. | Oct. 9, 1874                    | " "                                     | " See papers annexed, marked "F f."                                                                                            |
| Dabney G. Jones                                                        | - Murder -                                                                                 | Murder -                              | Mar. 21, 1876                   | " "                                     | "                                                                                                                              |
| Charles Worms                                                          | - Forgery -                                                                                | Forgery -                             | Apr. 11, 1876                   | " "                                     | " Copy of judgment in this case has already been transmitted to the Secretary of State for the Colonies.                       |
| Andrew St. Martin                                                      | - Assault with intent to commit murder.                                                    | Assault with intent to commit murder. | Apr. 12, 1876                   | " "                                     | "                                                                                                                              |

"B b."

RE HENRY MARTIN.

A letter is herewith furnished from Messrs. Cameron and McMichael, of Toronto, but no communication was ever made to the Government of Canada of any such remarks of Mr. Justice Morrison, other than those contained in this letter and no action was taken thereon by the Government of Canada.

A certified copy of the requisition of the United States Government was furnished to Messrs. Cameron and McMichael as requested by them but without any comment.

The records do not give any further information.



SIR,

Toronto, 15 August 1868.

ONE George H. Martin was extradited from this province some weeks ago, on a charge of robbing the Merchants' Union Express Company. The learned judge, Mr. Justice Morrison, before whom the said Martin was brought on a writ of *habeas corpus*, expressed the opinion that the evidence against the accused was very slight and he remanded him for extradition upon the faith that the United States Government would not permit the accused to be proceeded against on any charge other than that of robbery; nevertheless, as soon as the prisoner was taken across the lines he was arrested by the Express Company on a civil process. His counsel in the state of New York have obtained a *habeas corpus* for his discharge and require as part of the case to be presented on his behalf a certified copy of the requisition of the Government of the United States upon the Government of Canada for the prisoner's extradition. We acted for the prisoner while under arrest in Canada, and have now the honour to request that you will direct a certified copy of the said requisition to be furnished to us for transmission to the said G. H. Martin to be used as aforesaid. As the prisoner is restrained of his liberty it is important that the certificate if granted should be forwarded at the earliest possible moment, we would therefore respectfully ask to be favoured with a reply at your earliest convenience.

The Hon. the Secretary of State,  
Ottawa.

(Signed) We have, &c.,  
CAMERON and McMICHAEL.

“C c.”

The QUEEN v. FRANK RENO and CHARLES ANDERSON.

Extradition—Ashburton Treaty—31 Vict. cap. 94.—Police Magistrates—28 Vict. cap. 20.—Habeas Corpus—Return to.

The express car of a railway train on one of the roads in one of the United States of America was broken into and plundered by five or more men, two or three of whom fired at the conductor, who was endeavouring to stop them as they were moving off with the engine, &c. The conductor was at the time about eight feet from the person who fired the first shot, and the ball passed through his coat. This person was a brother of the prisoner Reno. The express messenger swore to the identity of the prisoners and as to the identity of the person who fired the first shot. The prisoners were arrested in Canada at the instance of the Express Company and demanded for extradition by the United States authorities. The prisoners offered evidence on their examination to prove an *alibi*.

A writ of *habeas corpus* directed to a gaoler was sent to the clerk of the Crown, with a return stating that he held the prisoner under a warrant of committal annexed, but was unable to produce them for want of means to pay for their conveyance. This return having been marked by the clerk “Returned to, filed, &c.” A judge in chambers allowed these papers to be withdrawn for the purpose of having another return made. The prisoners were afterwards produced with the writ, to which the foregoing return was annexed and another stating that the prisoners were held under the warrant already spoken of and a subsequent warrant by which an alleged defect in the first was intended to be cured.

*Held*: 1. That the first return was in fact no return, merely alleging matters of excuse for not making a return.

2. That a return cannot be filed until it has been read before the judge, and that the second return was authorized.

3. That the words in the first warrant “did feloniously shoot at, &c., with intent to kill and murder” are included in the words used in the extradition treaty and Act, which speaks of an “assault with intent to commit murder,” and therefore the warrant was not bad on that ground.

4. That it is not indispensable that the authority of the magistrate should be shown on the face of a warrant of commitment, and where the crime has been committed in a foreign country, and the committing magistrate has (as Mr. McMicken had in this case) jurisdiction in every county in Ontario, the warrant is not bad, though dated at Toronto, the county mentioned in the margin being York, but directed to the constables, &c. of the county of Essex, and being signed by the police magistrate as such for the county of Essex.

5. That 28 Vict. cap. 20., authorising the Governor to appoint police magistrates, relates to the administration of justice and is within the powers of the Legislature of Ontario and is still in force.

6. That under 31 Vict., cap. 94., the last Extradition Act, all that the committing magistrate or the court or a judge has to do is, to determine whether the evidence of criminality would, according to the laws of Ontario, justify the apprehension and committal for trial of the accused if the crime had been committed therein, and that such decision, if adverse to the prisoner, does not conclude him, as the question of extradition or discharge exclusively rests with the Governor-General.

7. That under the circumstances of this case there was sufficient *prima facie* evidence of the criminality of the prisoners to warrant a refusal to discharge them, and that there was evidence to go to a jury to lead to the conclusion that the intent of the prisoners was, at the time of the shooting, to commit murder.

8. That evidence offered to a magistrate by a prisoner on an examination of this kind by way of answer to a strong *prima facie* case, may perhaps properly be taken, but would not justify the magistrate in discharging the prisoner. And *quære* whether it was not the intention of 31 Vict. to transfer to the Governor exclusively the consideration of the evidence that he might determine whether the prisoner should be delivered up. The magistrate cannot weigh conflicting evidence to try whether the prisoner is guilty of the crime charged.

9. The duty of the court or a judge on a *habeas corpus* in such cases is to determine on the legal sufficiency of the commitment, and to review the magistrate's decision as to there being sufficient evidence of criminality.

[Chambers, October 4, 1868.]

A writ of *habeas corpus ad subjiciendum* under the statute of Car. 11. was issued to the gaoler of the county of Essex. \* \* \* \*

*Draper, C. J.* : The case for the prosecution may be thus condensed. The express car of a railway train which was passing through the county of Scott, in the state of Indiana, one of the United States of America, was broken into and plundered by a party of five or six and probably more men, two or three of whom fired at the conductor of the train, who endeavoured to stop them as they were moving off with the engine and this car. The first shot was fired when the conductor was about eight feet from the man who fired, and the ball passed through the conductor's coat near his body. The conductor knew the man who fired it, he being a brother of the prisoner Reno. The two prisoners are positively sworn to by the express messenger as having broken into the express car, with a third, whom he afterwards saw in custody and identified, and who was the man that fired the first shot at the conductor.

\* \* \* \*

Coming to the remaining question of law arising on the facts of this case, it must be observed that the proceeding against the prisoners is founded on the statute of Canada, 31 Vict., ch. 94.

The recital of that Act states the treaty of the 9th August 1842, between Her Majesty and the United States of America providing for the mutual delivery of all persons, who, being charged with the crime of murder or *assault with intent to commit murder*, or piracy (and some other offences) should seek an asylum or should be found within either territory "provided that this should only be done upon such evidence " of criminality as accordingly to the laws of the place where the fugitive or person " so charged should be found, would justify his apprehension and commitment for " trial, if the crime or offence had been there committed."

Under the first section, the magistrate in this case had clear authority to initiate proceedings against the prisoners, and upon their apprehension on a warrant issued by him, to examine upon oath any person or persons touching the truth of such charge, and upon such evidence as according to the law of this province (Ontario) would justify their apprehension and committal for trial if they had committed the crime charged therein, to issue a warrant for their commitment to the proper gaol, which in the present case is the gaol of the county of Essex.

The statute gives no authority except to commit for the purposes specified in the Act. If the evidence does not justify this step the accused must be discharged, there can be no bail required as a condition of discharge.

There is some language of Lord Tenterden in the case of *Rex v. Gourlay*, 7 B. & C. 669, not inapplicable to such case : I may quote it verbatim :

"The commitment authorised by the Act of Parliament is very peculiar. It is not " a commitment for safe custody, in order that the party may afterwards be brought



“to trial within our jurisdiction; nor is it a commitment in execution.” It is a commitment for *safe custody only* until the Governor, on a requisition made by the United States, shall, by his warrant, order the persons committed to be delivered to the person authorized by the United States to receive them, to be tried for the crime charged; or the Governor may order their discharge, as a copy of all the testimony taken before the committing magistrate is to be transmitted for his (the Governor's) information. This provision was not contained in the two former statutes. The question of extradition or discharge is therefore vested exclusively in the Governor-General, whose decision may possibly be influenced by considerations which a court could not entertain; and, as appears to me, all that the committing magistrate—or the judge or court before whom the accused is brought upon *habeas corpus*—has to do, is to determine whether the evidence of criminality would, according to the laws of this province, justify the apprehension and committal for trial of the accused, if the crime charged had been committed (or alleged to have been committed) therein.

Following this as the rule there appears to me no doubt that there was evidence to sustain a charge of assault with intent to commit murder. But it is objected that this is not the charge laid in the first information, which, on the contrary, is in these words: that the prisoners “did feloniously shoot at Americus Whedon with intent in so doing him, the said Americus Whedon, feloniously, “wilfully, and of their malice aforethought to kill and murder.” It certainly would have been the more prudent course to have followed the precise description of the offence given by the statute, but if the charge, as laid in the information, involves an assault with intent to commit murder, and the evidence sustains the charge of assault with that intent, and after the evidence taken the accused are committed on a charge following the very words of the treaty and statute. I think it would be discreditable to the administration of the law if the verbal variance between the information and the statute were allowed to prevail. That shooting at a man with intent to murder him involves an assault cannot be denied. An assault with intent to murder may be proved in various ways, when by an act of violence it is the intention of the assailant to murder. Here, the particular mode in which it was endeavoured to execute that intent, a mode which includes an assault, is expressed, it limits the charge to one particular mode of assaulting, but it is not the less a charge of assault with the felonious intent; and unless the precise words of the statute must be followed, it expresses the same charge which the statute expresses. If the words of the statute were exactly followed, the charge would be well laid; but the converse is not true, viz., that the charge is insufficiently made unless the very words are followed. I think, therefore, that the first warrant might be upheld.

As to the second warrant there is no such difficulty, but it is objected that the facts proved are as much evidence of other felonious intent as of the intent to murder, and therefore the intent to murder is left uncertain on the evidence, and so there is not sufficient evidence of the offence of an assault with intent to murder. The question of intent is for the jury. I apprehend that if on such evidence before one of our courts a jury found a prisoner guilty of an assault with intent to murder, it could not be denied that the evidence fully warranted the finding. If so, this objection fails.

It has also been urged, and very strongly, that the evidence shows that the intent of the parties in the first instance was to steal—not to murder, that the shooting at with intent to murder the conductor was no part of the original intent; that a new intention to commit a different felony though coupled with an act to commit it can only be fastened on those who actually shared in both the new intent and act, and that the evidence does not establish this against the prisoners.

After carefully examining the evidence, I am prepared to say that it may not and ought not to satisfy a jury that these two prisoners and Simon Reno were all three together when the shots were fired, and that two of the prisoners, possibly each of them, shot at the conductor.

There were, according to Harkins' deposition, the three who entered the express car almost directly after the shots were fired. There were others of the party at the same time on the engine, managing it. I do not perceive the bearing of the case of *Rex v. Cruse*, 8 C. and P. 541; 2 Mood C. C. R. 53. It establishes that the jury must be satisfied that the prisoners must have had in their minds, at the time of the shooting, an intent to murder. I think there is evidence to go to a jury to lead to that conclusion, as I think, if the conductor had been killed, there was evidence against them all of murder.

As to the effect to be given to the evidence put in on behalf of the prisoners before the committing magistrate, I consider for the purposes of this case that it was properly received. Some portion of it was given by persons on whose character and respect-

ability the prisoners counsel appeared to place little reliance; and there was some important evidence by way of rebuttal. But that such evidence, when offered by way of answer to a strong *prima facie* case, would have justified the magistrate in discharging the prisoners, I cannot for a moment admit.

Indeed, I have not been free from doubt whether it was not the intention of the Legislature by the last Act (31 Vict.), to transfer to the Governor-General exclusively the consideration of all the evidence, that he may determine whether the accused should be delivered up. If there is not sufficient evidence of criminality the magistrate ought not to commit; if there is, I think he ought, notwithstanding there is evidence sufficient, if true, to sustain an *alibi*. On *habeas corpus* the court or a judge would determine upon the legal sufficiency of the commitment to hold the accused in confinement, and would further review the magistrate's decision as to there being sufficient evidence of criminality. As at present advised, I think they would leave any other considerations presented by the evidence brought forward by the accused to the Governor. I do not venture to say there would be no exception to this course, but it is very easy to point out the danger that contrasting conflicting evidence, or considering the credibility of witnesses and similar matters might lead to. It would for many purposes be assuming the functions of a jury, and trying the whole merits of a case upon an inquiry instituted only to ascertain if there is such evidence of criminality as would justify the apprehension and committal—not the conviction—of the accused.

The treaty would be waste paper if a magistrate appointed to conduct only a preliminary investigation, should, after hearing sufficient evidence of criminality, take upon himself to decide that the incriminating evidence was worthless, or was displaced, because witnesses on the prisoner's behalf swore to a state of facts inconsistent with the incriminating evidence,—for example, as in the present case, swearing to an *alibi*. If the magistrate discharges the accused because he thinks their witnesses are entitled to more credit than those for the prosecution, he goes not only beyond the letter, but also, as I think, beyond the true meaning of the Act, which only confers authority on him to inquire whether the evidence of criminality is, according to the laws in force here, sufficient to sustain the charge. If he discharges because the evidence *pro* and *con* is equally strong, and he cannot tell which side is telling the truth, he is, in my humble judgment, equally in error, because he is assuming the functions of the tribunal to which belongs the trial of the prisoner's guilt, instead of limiting himself to the question directed by the statute.

I have heard an intimation that a contrary course has been adopted in a case in this province; that after positive testimony had been given to establish the offence charged, a witness for the accused was admitted, who swore that he, the parties accused, and the witness who swore positively against them, had confederated to get possession of the money, not by an act of robbery with violence, but by the willing connivance of the person in charge of it, and who was the principal witness against the accused; in effect, that he was a *particeps criminis* in embezzling or stealing the money, which was not, therefore, obtained by robbery, and therefore the crime actually committed did not come within the treaty; and that this conclusion was arrived at, and the accused was discharged. The facts may not have been accurately stated to me, but, assuming such a case, I could not have brought myself to such a conclusion. I do not inquire what effect such evidence would or ought to have before a tribunal setting to try the accused on a charge of robbery; but I repeat what has often been said, that we must assume that courts in other countries will be governed by the same general principles of justice which prevail in our courts; that they will give the proper weight to the evidence for the defence as our courts would give, and that to them should be left, so far as the merits are concerned at least, the trial of those questions which would be tried in similar cases by our own tribunals. The object of the treaty is to subject parties against whom a charge coming within the statute is sustained by sufficient evidence of criminality, to be put upon trial before the proper tribunal. It would be defeated if, on making the preliminary inquiry, the case on both sides were heard, and in effect, so far as the execution of the treaty is concerned, were disposed of,—

I decline to discharge these prisoners,—

1. Because I am of opinion that the committing magistrate had lawful authority to deal with the case.

2. Because I think there was sufficient evidence of criminality.

3. Because I think there was sufficient warrant of commitment.

4. Because my refusal to discharge does not conclude the prisoners, for the statute confers upon a higher functionary the power to grant or to withhold the warrant for extradition.

Order accordingly.



"D d."

## SCHEDULE of PAPERS annexed hereto.

1. Petition of R. B. Caldwell to His Excellency the Governor-General complaining that he is to be tried for an offence, not that for which he was extradited nor a crime within the Ashburton Treaty.

2. Judgment of Mr. Justice Benedict, of the N.S. Circuit Court, New York, referred to in the petition allowing a demurrer to Caldwell's plea setting up this defence.

3. Minute of Privy Council of Canada of 8th February 1871, recommending the transmission of all papers in the case to the Secretary of State for the Colonies.

4. Despatch from the Secretary of State for the Colonies to His Excellency the Governor-General (No. 420 of May 16, 1871), intimating that the case was not one in which Her Majesty's Government would be justified in claiming the resurrender of the petitioner, and informing His Excellency of the views of Her Majesty's Government upon the case.

TO HIS EXCELLENCY and LORDSHIP the GOVERNOR-GENERAL of the DOMINION of CANADA.

The humble petition of Richard Baker Caldwell, of Prescott, in the county of Grenville, in Ontario, in the dominion of Canada, respectfully represents—

THAT your petitioner has been ever since the month of May, in the year 1869, a resident with his family at Prescott aforesaid, engaged in establishing the business of manufacturing boards and shingles and that his family still there resides :

That your petitioner was forcibly taken from his said residence upon a warrant issued by his honour Alexander McNab, police magistrate at Toronto, upon the information and complaint of Albert Duane Shaw, of the city of Toronto, American consul, stating that your petitioner was guilty of the crime of forgery committed within the United States of America :

That said charge of forgery was entirely false and was cunningly devised and intended for the purpose of bringing your petitioner within the limits of the United States of America so that he might be held amenable for certain alleged offences which were not extraditable under the provisions of the Ashburton Treaty :

That after the arrest of your petitioner upon said charge of forgery, and after hearing the evidence offered by said A. D. Shaw to substantiate said charge, your petitioner was upon said charge and by the authorization of your Lordship in pursuance of the provisions of the treaty between Her Britannic Majesty and the United States of America, commonly called "The Ashburton Treaty," ratified August 9th, 1842, providing for the extradition of persons charged with certain offences, extradited and delivered over to the authorities of the United States, as by the certificate of the said police magistrate hereunto annexed will more fully and at large appear :

That your petitioner ever since he was so forcibly taken out of the dominion of Canada has been confined in a gaol in the city of New York :

Your petitioner further humbly shows that the charge of forgery made against him, under which he was taken from his family and home in Canada and brought to and confined in a gaol in New York, is wholly false, and is made colourable only by the oaths of witnesses who acknowledge that they committed the crime and say that your petitioner was an accessory or accomplice with them :

Your petitioner further humbly shows that ever since he was so brought to New York he has been anxious to be tried upon the charge for which he was so extradited :

That an indictment has been found against your petitioner in the Circuit Court of the United States for the Southern District of New York for the alleged offence under the Acts of Congress of the United States of bribing officers of the Customs and of the Internal Revenue Department, and that he is about to be tried for said alleged offences, which said alleged offences your petitioner is advised do not fall within said treaty known as the Ashburton Treaty or any other treaty between Great Britain and the United States of America :

That your petitioner upon being called upon to plead to said indictment did interpose a plea to the jurisdiction of said court in the words following ; to wit,—

"The said Richard B. Caldwell having heard the indictment against him read says that this court ought not to take cognizance of the offence in said indictment specified, because, protesting that he is not guilty of the same, he nevertheless says that at the time when he was arrested and brought within the jurisdiction of this court he was a resident of Prescott, in the province of Ontario, dominion of Canada, and was brought

into the jurisdiction of this court on a charge of forgery under the provisions of the treaty between Her Britannic Majesty and the United States of America, commonly called the Ashburton Treaty, ratified August 9, 1842, providing for the extradition of persons charged with certain offences, and that the offence specified in said indictment is not one of the offences mentioned in said treaty and that this court has no jurisdiction in the premises."

"And this he the said Richard B. Caldwell is ready to verify, wherefore he prays judgment if this court will or ought to take cognizance of the said indictment, and that he may be dismissed and discharged."

That a demurrer was interposed in behalf of the Government of the United States wherein and whereby the facts in said plea stated were admitted, and that the said court thereupon rendered an opinion and judgment upon said plea and demurrer of which an exemplified copy is hereunto annexed; and while your petitioner humbly craves your Lordship's attention to the whole of said opinion he particularly prays attention to the following passage therein contained:—

"The prisoner was brought within the jurisdiction of the United States by virtue of a warrant of the Executive Authority of a foreign Government upon the requisition of the Executive Department of the United States, and while abuse of extradition proceedings and want of good faith in resorting to them doubtless constitute a good cause of complaint between the two Governments, such complaints do not form a proper subject of investigation in the courts, however much those tribunals might regret that they should have been permitted to arise."

Your petitioner further shows that he is advised by his counsel and believes, and therefore respectfully submits, that it has always been the decision and determination of the Governments of Great Britain and the United States of America not to permit any person to be taken from the territory of either to be put upon trial in the other, except for the particular offences specified in their mutual treaties, and that the authorities and cases in support of this position are quoted at large in "Forsyth's Cases and Opinions on Constitutional Law," published at London, 1869:

That it is in violation of the law of nations and of the spirit and true intent and meaning, if not of the very language of the treaties between Great Britain and the United States, that your petitioner has been taken from his home in Canada upon pretence that he was guilty of a crime for which he might properly be extradited, and is now put on trial for an alleged offence for which extradition could not have been demanded or permitted.

Your petitioner therefore humbly prays your Lordship to ask of the Government of the United States of America that it do not permit your petitioner to be tried for any other offence than that upon pretence of which your Lordship allowed the warrant for extradition, or at least not for any offence upon charge whereof your Lordship would not have allowed said warrant of extradition to issue:

Also that the said Government of the United States of America may grant to your petitioner an early trial for the offence whereof he was charged and extradited and of which he avers himself innocent, or if said Government cannot or do not within a reasonable time establish that your petitioner is guilty of an offence for which his extradition could be properly demanded then that said Government cause your petitioner at their own expense to be returned to his home at Prescott in Canada:

And your petitioner as in duty bound will ever pray, &c.

Dated Ludlow Street Gaol, in the city of New York, this 12th day of January 1871.

(Signed) RICHARD BAKER CALDWELL.

Wm. Wemf. Anthou,  
Counsel for Petitioner,  
16, Exchange Place, New York.

United States of America,  
State of New York,  
City and County of New York. } ss.

Richard Baker Caldwell, of Prescott, in the county of Grenville, in the province of Ontario, in the dominion of Canada, being duly sworn, doth depose and say that the foregoing petition is in all respects true in substance and matters of fact.

(Signed) RICHARD BAKER CALDWELL.

Sworn this 12th day of January, A.D. 1871, before me,

(Signed) WILL. L. GARDNER,  
Notary Public, N.Y.C.



State of New York, }  
City and County of New York. } ss.

I, Charles E. Loew, Clerk of the city and county of New York, and also clerk of the Supreme Court for the said city and county, being a court of record, do *hereby certify* that Wm. L. Gardner, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said state, and for general purposes, and that his signature thereto is genuine as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 12th day of January 1871.

(Signed) CHARLES E. LOEW,  
Clerk.

Stamp.

Canada, Province of Quebec,  
County of York, City of Toronto.

To wit—

{ The information and complaint of Albert Duane Shaw,  
of the city of Toronto, American consul, taken on oath  
before me, Alexander McNabb, Esquire, police magistrate  
in and for the said city, the twenty-first day of January in the year of our Lord one thousand eight hundred and seventy.

The said informant, upon his oath, saith that he is informed and verily believes that one Richard B. Caldwell, late of the city of New York, in the state of New York, one of the United States of America, Custom House Broker, did, at the city of New York aforesaid, within the jurisdiction of the United States of America, on or about the third day of April in the year of our Lord one thousand eight hundred and sixty-seven, unlawfully and feloniously falsely make, forge, and counterfeit the endorsation "Jacob Ring" on the bill of exchange marked "A," herewith produced, with intent to defraud the United States of America against the form of the statute in such case made and provided, and did at the said city of New York, on the day and year aforesaid, unlawfully and feloniously utter the false, forged, and counterfeited endorsation "Jacob Ring" on the said bill of exchange marked "A" with intent to defraud the said United States of America, the said bill of exchange amount drawn by F. E. Spinner, treasurer of the said United States of America, as such treasurer, on the Fifth National Bank, New York, and bearing date at the city of Washington, in the said United States of America, the thirtieth day of March in the year of our Lord one thousand eight hundred and sixty-seven, payable to the order of "Jacob Ring" at sight, for the sum of three thousand eight hundred and nineteen dollars and seventy-five cents. That the said informant verily believes from information received that the said Richard B. Caldwell is at present in the city of Toronto.

The informant therefore prays that a warrant may issue and justice done in the premises sworn before me at the city of Toronto, this 21st January 1870.

(Signed) A. MACNABB, P.M.

(Signed) A. D. SHAW,  
U. S. Consul.

I, Alexander MacNabb, police magistrate in and for the city of Toronto, do hereby certify that the two sheets of paper annexed, hereby marked with the letters "A" and "B," contain a true copy of the information sworn before me on which I issued a warrant for the arrest of Richard B. Caldwell, and the said Caldwell was arrested on said warrant and committed, after hearing the evidence offered by said A. D. Shaw, to our common gaol in said charge, and was on said charge extradited and delivered over to the United States authorities.

In witness whereof I have hereunto set my hand and affixed my seal of office this 18th day of October, A.D. 1870.

(Signed) A. MACNABB, P.M.

Seal.

The PRESIDENT of the UNITED STATES of AMERICA.

To all to whom these presents shall come, greeting:—

Know ye, that we, having inspected the records and files of the Circuit Court of the United States for the Southern District of New York, do find certain paper writings there, remaining of record, in the words and figures following, to wit:

(L.S.)

Seal.

## United States Circuit Court, Southern District of New York.

The United States  
 v.  
 Richard B. Caldwell and others. } January 3, 1871.

*Benedict, J.:* This case comes before the court upon a demurrer to the plea. The prisoner has been indicted for the offence of bribing an officer of the United States.

To this indictment the defendant pleads that this court ought not to take cognizance of the offence in the indictment, because that at the time when he was arrested and brought within the jurisdiction of this court he was a resident of Prescott, in the province of Ontario, dominion of Canada, and was brought into the jurisdiction of this court on a charge of forgery, under the provisions of the treaty between Her Britannic Majesty and the United States of America, commonly called the Ashburton Treaty, ratified August 9th, 1842, providing for the extradition of persons charged with certain offences.

That the offence specified in said indictment is not one of the offences mentioned in the said treaty, and this court has no jurisdiction in the premises. To this plea the Government demurs, and thus the question is raised whether the facts set forth in the plea are sufficient to oust this court of jurisdiction to try the defendant for an offence otherwise conceded to be within its cognizance.

On the part of the defence reliance is placed upon sundry cases in the tribunals of this state which furnish, it is claimed, a support to the proposition of the defence, that this court has jurisdiction of the person of the prisoner for a single purpose only, namely, his trial for the crime for which he was extradited.

The cases referred to are all civil cases, where, in the service of the warrant of arrest was set aside by the court on motion, because it appeared that the plaintiff in the action had resorted to fraud to procure the presence of the defendant within the territorial jurisdiction of the court, in order that he might cause his arrest. Such cases do not furnish a rule applicable in criminal prosecutions, nor do I find any case where a warrant of arrest of a person charged with crime at the instance of the people has been set aside because of deceit practiced to bring the accused within the reach of the warrant. But if the same rule were applicable in criminal prosecutions and in civil actions, and if the question here arose upon a motion to set aside the arrest instead of a plea to the jurisdiction, I am of the opinion that the relief could not be granted, for the reason that the person of the prisoner is not within the jurisdiction of the United States by virtue of any warrant issued out of this or any court. The prisoner was brought within the jurisdiction of the United States by virtue of a warrant of the executive authority of a foreign government upon the requisition of the executive department of the Government of the United States; and, while abuse of extradition proceedings and want of good faith in resorting to them, doubtless constitute a good cause of complaint between the two Governments, such complaints do not form a proper subject of investigation in the courts, however much those tribunals might regret that they should have been permitted to arise. To hold otherwise would in a case like the present permit a person accused of crime to put the Government on trial for its dealings with a foreign power. In the present case there is hardly room for the charge that the extradition proceedings against the accused were in bad faith, inasmuch as the records of this court show an indictment duly found against the accused for the crime by reason of which his extradition was granted.

But whether extradited in good faith or not the prisoner, in point of fact, is within the jurisdiction of the court charged with a crime therein committed, and I am at a loss for even a plausible reason for holding upon such a plea as the present that the court is without jurisdiction to try him.

The question appears to me to be not one of jurisdiction of the court but rather of privilege of the accused from arrest, and I cannot say that the fact that the defendant was brought within the jurisdiction by virtue of a warrant of extradition for the crime of forgery affords him a legal exemption from prosecution for other crimes by him committed.

I may add that the case of Heilborn, which, so far as I know is not reported, probably affords a precedent for the action of the Government in the present case. Heilborn was delivered by the Government of the United States to the Government of Great Britain upon a charge of forgery, when the facts out of which the charge arose were proved before the Commissioner, the ground taken in his behalf was that the crime committed was not forgery but embezzlement. The Commissioners held otherwise, and the prisoner was extradited; but upon arrival in Great Britain he was then indicted and convicted of embezzlement upon the same facts which had been claimed before the



Commissioner to show forgery. That case therefore presented the point now taken here, but whether it was taken upon the trial in Great Britain I do not know.

I do not therefore refer to the case as an authority, but simply notice it as perhaps a precedent. The demurrer must be held to be well taken, but the defendant has leave to withdraw his plea and enter a plea of not guilty.

A copy.

KENNETH G. WHITE, clerk.

All of which we have caused by these presents to be exemplified, and the seal of the said Circuit Court to be hereunto affixed.

Witness, the Honourable Salem P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, in the Southern District of New York, this 10th day of January in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-fifth.

(Signed) KENNETH G. WHITE, clerk.

I, Samuel Blatchford, Judge of the said Circuit Court, do hereby certify that the foregoing exemplification is in due form of law.

(Signed) • SAMUEL BLATCHFORD.

COPY of a REPORT of a COMMITTEE of the Honourable the Privy Council approved by His Excellency the Governor-General on the 8th of February 1871.

The Committee of Council have given their attentive consideration to the annexed Report, dated 6th February 1871, from the Honourable the Minister of Justice, in reference to the petition of Richard Baker Caldwell, who was surrendered to the United States under the Extradition Treaty, on the charges of forgery and uttering forged paper, and they concur in the opinion given in the said report, that the matter of this petition is one for the consideration of Her Majesty's Government; and accordingly recommend that it be transmitted by your Excellency to the Right Honourable Her Majesty's Secretary of State for the Colonies, so that such action may be had upon it as Her Majesty's Government may deem expedient.

Certified.

WM. H. LEE, C.W.P.C.

Department of Justice,

Ottawa, February 1871.

In the matter of the petition of Richard Baker Caldwell, the undersigned, to whom the matter was referred, has the honour to report.

That the petitioner was surrendered to the United States Government under the treaty with England on the charges of forgery and uttering forged paper.

That the petitioner appears to have been a resident of the United States until after the alleged commission of those offences, when he removed to Canada.

That the petitioner states, that although he was surrendered for the crimes above mentioned he has not yet been tried for them, and that those charges were not made *bonâ fide*, but for the purpose of securing possession of his person, and in order to put him upon his trial for the offence against the laws of the United States of bribing officers of the Customs and Internal Revenue Department.

He further states that he was indicted for the last-mentioned offence, and pleaded to the indictment that he was surrendered and brought within the jurisdiction of the court on the charge of forgery, and could not properly be tried except for that charge.

To this plea the Government of the United States demurred, and the court decided in favour of the demurrer.

The petitioner quotes a portion of the judgment said to have been delivered upon the occasion, as follows:—

The prisoner was brought within the jurisdiction of the United States by virtue of a warrant of the executive authority of a foreign Government upon the requisition of the executive department of the United States; and while abuse of extradition proceedings, and want of good faith in resorting to them doubtless constitute a good cause of complaint between the two Governments, such complaints do not form a proper subject of investigation in the courts, however much those tribunals might regret that they should have been permitted to arise.

The petitioner thereupon prays your Excellency to ask of the Government of the United States that it do not permit him to be tried for any offence other than that upon

pretence of which he was surrendered, and also that an early trial may be accorded to him for such offence.

The undersigned is of opinion that the matter of this petition is for the consideration of Her Majesty's Government, and he therefore recommends that it be transmitted to the Right Honourable the Secretary of State for the Colonies, so that such action may be had upon it as Her Majesty's Government may deem expedient.

(Signed) JOHN A. MACDONALD.

The SECRETARY of STATE for the COLONIES to the GOVERNOR-GENERAL.

MY LORD,

Downing Street, 16th May 1871.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch No. 47, of the 20th of February, relating to the case of Richard Caldwell, who was surrendered to the United States Government under the Extradition Treaty on the charges of forgery and uttering forged paper, and who is alleged to have been subjected to legal proceedings in the United States for an offence against the laws of that country for which he was not surrendered, and for which he was not liable to surrender under that treaty.

I have been in communication with the Secretary of State for Foreign Affairs as to this case, and the opinion of the law officers of the Crown has been taken upon it.

Her Majesty's Government are advised that this is not a case in which they would be justified in claiming the resurrender of the petitioner from the United States Government. The obligation of Great Britain under the convention of 1842 is qualified by no other condition than that evidence of a definite kind shall be forthcoming of the fugitive having committed one of the crimes enumerated in the Convention. It appears that such evidence was produced to the satisfaction of the Canadian authorities, and the petitioner was thereupon surrendered to the United States Government. It further appears from the decision of the judge of the Circuit Court of the Southern District of New York upon the demurrer of the petitioner that he has been duly indicted for the offence by reason of which he was surrendered, and it seems that he is to be tried for it. Her Majesty's Government are further advised that there is nothing in the Convention which would preclude the indictment of the petitioner in the United States for an additional offence which is not enumerated in the Convention, so long as such proceedings were not substituted for proceedings against him on the charge, by reason of which he was surrendered.

The original enclosures which accompanied your despatch are herewith returned in compliance with your request.

Governor-General  
The Right Hon. Lord Lisgar, G.C.B.,  
&c., &c., &c.

I am, &c.,  
(Signed) KIMBERLEY.

"E e."

In the matter of the QUEEN v. ALBERT J. GOULD.

EXTRADITION—FORGERY—EVIDENCE.

Case presenting several views.

In cases arising under the Extradition Treaty, if the evidence present several views, on any one of which there may be a conviction, if adopted by the jury, the court will not discharge the prisoner, but will direct extradition. *Held*, also, that the execution of a deed by prisoner in the name of and representing himself to be another, may be forgery, if done with intent to defraud even though he had power of attorney from such person, but fraudulently concealing the fact of his being only such attorney and assuming to be the principal.

The prisoner was brought up on *habeas corpus* on an application to discharge him having been committed for extradition by the judge of the County Court of the county of York, on a charge of having feloniously forged a certain deed of assignment of a patent right purporting to be signed, made, and executed by one Phineas Strong, of the city of New York, in the state of New York, with intent to defraud.

\* \* \* \* \*  
• *Gwynne, J.*: It cannot be denied that the evidence for the prosecution presents a sufficient *prima facie* case to go to a jury, and if uncontradicted, to convict the prisoner,



if the jury should be satisfied there was an intent to defraud, and it is sufficient for the present purpose to say that, inasmuch as a *prima facie* case was made out, sufficient to warrant the commitment of the prisoner to stand his trial upon the charge, a jury is the only constitutional tribunal which can determine whether the evidence offered to displace the impression which the *prima facie* case is calculated to make, does or not satisfactorily displace it. If the jury should adopt the testimony of Phineas Strong, and should be of opinion that a seal was falsely and fraudulently set by Gould to the instrument produced as the power of attorney of Phineas Strong, after Strong had signed his name, as he says, under the belief that he was subscribing some document at Gould's request as a witness only, that they may come to the conclusion that the power of attorney is itself a forged instrument, and if it be, they may, perhaps, as a consequence arrive at the conclusion that the deed, which is impeached, is a false instrument, executed with intent to defraud, notwithstanding that it is stated in evidence to be sufficient for a person having a power of attorney according to the law of the United States to execute such a deed as that which is impeached, in the name of his principal, suppressing at the time the fact of his having a power of attorney, and even though a jury may be unable to come to the conclusion that the seal was so set to the instrument, and so should be unable to find that the power of attorney is itself a false and forged document, yet it may be that they should be of opinion that the facts would warrant their finding that its execution and the execution of the deed produced by the prisoner, purporting to be from Perry to Strong, were effected under circumstances of falsehood, and in a manner so false and fraudulent as to vitiate them wholly and deprive them of all vitality, so as to prevent their being of any force when now brought forward for the purpose of divesting the prisoner's conduct of that character of criminality which the *prima facie* evidence offered naturally attaches to his conduct in suppressing the alleged authority, when he was executing in an assumed name and person the deed which is now impeached. Moreover, I am not prepared to say that it is clear beyond all question that assuming the power of attorney to have been *bona fide* executed by Phineas Strong, the act of the prisoner's suppressing it, and of his assuming the person and name of Strong to effect his purpose with the prosecutor, which otherwise he might have been unable to effect, and of his executing, as Strong and in his name, a deed containing a covenant apparently not warranted by the power, may not be forgery. In short, I am not prepared to say that in no view of the evidence taken can the execution of the impeached deed constitute forgery. If the offence charged had been committed in this country, I do not think that the case would be ripe for us to pronounce a judgment whether the forgery which is charged had been committed or not until a jury should pass upon the evidence, and I do not think we can be called upon to do so upon an application of this nature. I think that the learned judge of the county court has formed a correct judgment in holding that the evidence is such as to require the intervention of a jury to eliminate the facts, and we would not be justified in withholding the evidence from the constitutional tribunal.

This would be the effect of our judgment if we should order the prisoner to be discharged. The proper course, in my judgment, is to leave the prisoner to abide the legal consequences of the commitment of the learned judge who has taken the evidence.

*Hagarty, C. J.* : I am to dispose of this case on this principle, on the evidence laid before the judge below, was there enough, in the words of the Act, "to justify the apprehension and committal for trial of the person accused, if the crime of which he shall be so accused had been committed herein," viz., in this province.

I do not consider that we are called upon in a case presenting several views to determine which of these views is best supported as against the others, by the weight of evidence or intrinsic probabilities of the case.

If there be a view of the case which, when properly submitted to a jury, would, if adopted by them, warrant their convicting, I think it quite sufficient.

The learned judge below has passed his judgment on the matter and has decided against the prisoner. I must be fully satisfied that there is no legal ground on which such decision can be supported before I practically reverse his decision.

It is sworn by Towers that the prisoner always represented himself to be Phineas Strong, and that he dealt with him solely as such person and not as agent for him or any one else.

This may have been done in bad faith by the prisoner fraudulently concealing the fact that he was only the attorney of the other, or it may have been a mere error or an unintentional misconception.

At the foot of the deed to Towers we find a short memorandum under seal, by which Phineas Strong is made to agree that in a certain event he would repurchase the patent right from Towers for a large sum of money, on dividing the profits made in the meantime between them.

Had he announced himself as Strong's attorney, and shown his authority, it would have been disclosed at once that he had no power to make any such special contract.

This would be a most important element in the consideration, whether he fraudulently represented himself to be the principal and not the agent.

It is not denied that the fraudulent personation of another person, and the execution of a deed in his name and as his deed, is forgery.

I am not prepared to hold that this is not sufficient ground for committing him for trial in this view of the evidence, or that at the trial it would not be proper to submit such a view to the jury.

It is to be observed that Phineas Strong swears that he never knowingly executed any deed or power of attorney whatever, that all he understood he was doing was attaching his name as witness to some papers, and that he never sealed them. The seal appears partly over his name. This, of course, may have been done quite properly, the seal being put on after he had written his name, and he then may have delivered it as his deed. This is not the forgery charged, but all the dealing with Strong was according to Strong's account fraudulent, and the whole conduct of the prisoner, first, in the dealing with Strong, and afterwards with Towers, would be considered indicating the question in the eye of the law whether he is guilty or not guilty of the forgery charged.

In *re Windsor* (6 B. and S. 527), Cockburn, J., says: "We must take the term 'forgery' in the Extradition Act to mean that which by universal acceptance it is understood to mean, namely, the making or altering a writing so as to make the writing or alteration purport to be the act of some other person, which it is not."

There is a case of *Regina v. Ritson* (L. R. C. C. R. 200). A father made a deed to a son, antedating it for a fraudulent purpose. The court, on a case reserved, held that they were properly convicted "as it is a forgery to fraudulently make a deed which purports to be something quite different from that which it really is, even although it is executed by the parties between whom it is expressed to be made."

It is no part of my duty to decide on the weight of evidence or of the possible favourable view a jury may take of the prisoner's conduct.

I find a decision of the judge before whom the complaint was investigated; I find one view of the evidence adduced on which that decision may be upheld; and whatever opinion I might hold of the existence of other views at least, as open to adoption, I do not think I am called on to interfere.

I have already expressed my opinion in this court of the spirit which in my judgment should govern the execution of the Extradition Treaty. I have neither the right nor the desire to put my opinion of the weight or the cogency of the evidence in the place of that of the jury who may be selected to try the prisoner.

I think the prisoner must be remanded.

Galt, J., concurred.

Prisoner remanded.

"F f."

RE WM. BEVERLY.

The prisoner after commitment presented a petition to the effect that the demand for his extradition, assault with intent to commit murder, was colourable, and made with a view to get possession of him so as to try him for escape from gaol, not an extraditable offence.

No action was taken on this petition, the evidence of the offence charged being very conclusive.



## "H."

RETURN of all CASES of EXTRADITION of PRISONERS from the UNITED STATES to the PROVINCE of UPPER CANADA under TREATY between GREAT BRITAIN and the UNITED STATES between 9th August 1842 and 30th June 1867.

| Name of Prisoner. | Charges on which Prisoner was |                     | Date of Writ of Recapias. | Charges on which Prisoner was tried.                                                                                                                                                                                                                         | Whether any Special Stipulation beyond those in Treaty was required or conceded by either Country as a Condition of Surrender. |
|-------------------|-------------------------------|---------------------|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
|                   | Demanded.                     | Extradited.         |                           |                                                                                                                                                                                                                                                              |                                                                                                                                |
| James H. Hull     | Forgery -                     | On charge demanded. | 16 May 1856               | Indicted at the London Fall Assizes, 1856, for forgery. Bill ignored by grand jury.                                                                                                                                                                          | None.                                                                                                                          |
| William Townsend. | Murder -                      | " " "               | 3 June 1857               | Tried for murder. The jury did not agree, and the prisoner was discharged.                                                                                                                                                                                   | "                                                                                                                              |
| Edgar Naiter      | " -                           | " "                 | No record                 | Tried for murder. Convicted, and sentenced to be executed.                                                                                                                                                                                                   | "                                                                                                                              |
| Peter Lane        | Arson -                       | " "                 | 21 April 1860             | Tried for arson. Convicted, and sentenced to five years imprisonment. Also at same assizes, for prison breach. Convicted and sentenced to two years imprisonment.                                                                                            | "                                                                                                                              |
| Robert Coutter    | Murder -                      | " "                 | 27 Jan. 1863              | Tried for murder. Convicted, and sentenced to be executed.                                                                                                                                                                                                   | "                                                                                                                              |
| Thomas A. Milan.  | Assault with intent to kill.  | " "                 | 3 April 1865              | Indicted at Welland Spring Assizes 1865, for assault with intent to kill. Not tried, owing to absence of a necessary witness. Tried also at same assizes for attempt to escape. Convicted, and sentenced to a fine of \$10, and two (2) months imprisonment. | "                                                                                                                              |
| D. W. Van-aernam. | Forgery -                     | " "                 | 24 Dec. 1853              | Tried for forgery. Convicted, and sentenced to seven years imprisonment in the Penitentiary.                                                                                                                                                                 | " See papers annexed, marked "G g."                                                                                            |

## "G g."

## REGINA v. VAN AERMAN.

A prisoner charged with forgery in Canada, having been arrested in and surrendered by the Government of the United States under the Ashburton Treaty upon application for bail on the ground that there was no evidence of the *Corpus delicto*. *Held*: That the surrender of the prisoner by the United States Government was sufficient evidence.

*Macaulay, C. J.*: The application for bail in this case was originally made before Mr. Justice Burns, in chambers, and renewed before me in chambers, but not being prepared to grant it, I thought it better to leave it open to the prisoner to apply to the court in term, without any decisive opinion expressed by me; and the application was renewed during this term before this court.

The Ashburton Treaty was confirmed by the Imperial statute 6 & 7 Vict., ch. 76., and the provincial Act 12 Vict., ch. 19., both of which render copies of the depositions taken in the United States upon which an original warrant may have been granted admissible as evidence, &c.

Now here we have, in the first place, the deposition of the agent of the Montreal Bank, expressly charging the prisoner with forgery, followed by an application for the prisoner's surrender, and his surrender accordingly. Forgery, and the altering of forged papers, is an offence specified in the treaty, and the surrender could only be upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged should be found as would justify his apprehension and commitment for trial, if the crime or offence had been there committed; whether the prisoner sought an asylum or was only found in the United States, may be a question, apparently both. The evidence and proofs on which his surrender was determined are not before us, but it must be taken to have been sufficient to have warranted his commitment in the state of New York where he was found, and where the false instrument was fabricated.

Upon this application, however, the requirements of the treaty, to justify his surrender, should not be overlooked. The great seal instrument, moreover, demanding his surrender and directing his delivery to the sheriff, until delivered by due course of law, as an act of state, under the treaty, is another material circumstance when the court is asked to exercise its discretion in granting bail under the statute 4 & 5 Vict., ch. 24., sec. 5.

Upper Canada. Common Pleas Report, 1855, vol. iv., paper 288.

The convicting magistrate has transmitted copies of all the depositions, &c. before him, but not all that it may be reasonably supposed to exist. It is not necessary to express an opinion on the point, but I am much disposed to regard the instrument as forged bill of the Hamilton Bank, and even if the prisoner's offence amounted to false pretences only, I should hesitate to bail him under the circumstances under which he has been taken, surrendered, and received into custody.

Being in custody, he is liable to be prosecuted for any offence which the facts may support, and we must bear this in mind, especially in reference to the Forgery Act 10 & 11 Vict., ch. 9., sec 13. We must bear in mind, also, that the prisoner has not property forthcoming to meet the charge, and did not voluntarily surrender himself within the reach of our laws, but that he was a fugitive, and the very fact of flight from such a charge militates against the party.—4 Blk. Com. 378; 1 Chitty's Crim. Law 98, 99, 731, 1 Leach 484; *Rex v. Judd* (2 T. R. 255-7; 9 Dow 553).

I think there is on the whole sufficient evidence to warrant the detention of the prisoner in custody.

That the offence, if established, will be the knowingly altering a forged instrument, and though the evidence as it appears on the depositions might be inadmissible in some points, and insufficient on the whole to warrant a conviction, enough appears to require us to decline enlarging him upon bail under existing circumstances.

McLean, J., and Richards, J., concurred.—Bail refused.

“ I.”

RETURN of all CASES of EXTRADITION of PERSONS from the UNITED STATES to the PROVINCE of LOWER CANADA under TREATY between GREAT BRITAIN and the UNITED STATES between 9th August 1842 and 30th June 1867.

| Name of Prisoner. | Charges on which Prisoner was |                     | Date of Writ of Recipias. | Charges on which Prisoner was Tried.                  | Whether any Special Stipulation beyond those in Treaty was required or conceded by either Country as a Condition of Surrender. |
|-------------------|-------------------------------|---------------------|---------------------------|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
|                   | Demanded.                     | Extradited.         |                           |                                                       |                                                                                                                                |
| Cawlus Lepage -   | Arson -                       | On charge demanded. | July 23, 1844             | Tried for arson and convicted                         | None.                                                                                                                          |
| John Cole -       | Murder -                      | „                   | Mar. 24, 1852             | Tried for murder and convicted                        | „                                                                                                                              |
| H. A. P. Holland  | Uttering forged paper.        | „                   | Feb. 6, 1855              | Information not received from provincial authorities. | „                                                                                                                              |
| J. G. Weatherwax  | Murder -                      | „                   | Jan. 27, 1857             | Tried for murder and acquitted                        | „                                                                                                                              |
| Henry Martin -    | Arson -                       | „                   | Dec. 9, 1863              | Tried for arson and convicted                         | „                                                                                                                              |
| John Paxton -     | Forgery -                     | „                   | July 25, 1866             | Uttering forged paper                                 | „ See papers annexed marked “ H h.”                                                                                            |

“ H h.”

(Crown Side.)

Montreal, 20th October 1866.

*Coram* : DRUMMOND, J. ; BADGLEY, J. ; and MONDELET, A. J.

RÉGINA *v.* JOHN PAXTON.

*Held* : That were a prisoner has been arraigned on a charge of uttering forged paper it is not competent for the court to order the trial by jury of a preliminary question raised by prisoner's counsel to the effect that the prisoner had been extradited from the United States on a charge of forgery.

This was a motion by the Crown for a new trial.

The prisoner had been arraigned on a charge of uttering a forged promissory note, knowing it to be forged.

Instead of pleading to the indictment, the prisoner's counsel put in a preliminary plea, to the effect that the prisoner was a resident of Chicago, in the state of Illinois,



one of the United States of America; and that he had been thence extradited on a charge of forgery, and could not therefore be legally tried here for any other offence.

To this preliminary plea the Crown filed a replication denying the truth of its allegations.

The court thereupon ordered a jury to be empanelled, to try the issue of fact set up in the preliminary plea, and a trial accordingly took place, and resulted in a verdict, "that they (the jury) find the prisoner was extradited for forgery," whereas he is actually indicted for uttering forged paper. The Crown prosecutor then moved that the finding and verdict of the jury be set aside and a new trial granted.

*Mondelet, J.*, said, that after having considered the reasons contained in the motion, he was of opinion, firstly, that the prisoner had not, upon the issue submitted to the jury, the right to challenge peremptorily as he had done, and he was of opinion that upon this ground the verdict could not be sustained. Upon the other point raised, that the warrant of the Governor did not afford any evidence or proof of the extradition of the prisoner, he was also with the Crown, and was of opinion that the extradition of the prisoner was not a matter of fact to be inquired into by a jury, but to be determined by the court; this, he said, was the opinion of the majority of the court. And although the motion for a new trial would not be granted, the verdict, the defendant's plea, and all proceedings had thereunder, must be set aside, and the prisoner ordered to plead to the indictment.

Badgley, J., concurred in this view of the case, except that he did not consider the challenge of jurors a ground for objection, particularly as the jurors who found the issue were qualified to do so, and no complaint was made by the Crown that any injury or wrong had been done by the jury. He was also of opinion that Judge Drummond was right in refusing to admit the depositions sought to be introduced by the Crown. On all the other points he differed from Mr. Justice Drummond and concurred in the judgment pronounced by Mr. Justice Mondelet.

*Drummond, J.*: As I dissent from the judgment pronounced by the majority of the court, I should, in accordance with prevailing practice have enunciated my opinion before my brother judges had expressed theirs. But owing to the short time that has intervened since the close of the argument, I have not had an opportunity of deliberating with them upon the subject, and therefore I requested that they would first state the reasons upon which they had founded their judgment.

The question which we have been called upon to decide is one of very great importance; and was first, during the present term, presented to my notice under the circumstances which for a more correct understanding of the matter I shall now proceed to state. The grand jury returned 28 bills of indictment against the prisoner, who, upon being placed in the dock and required to plead thereto objected to the jurisdiction of the court, upon the ground that his presence here was due to the fact that he had been extradited by the United States upon the demand of His Excellency the Governor-General, whose warrant charges him with the crime of forgery.

For this alleged offence, said the prisoner, I am willing to answer and be tried. But I deny your right, now that you have obtained the possession of my body upon this accusation to substitute in its place and stead the charge of uttering forged paper, another and totally distinct offence,—one for which I was not extradited, and therefore one for which, by a just and legal interpretation of the provisions of the treaty under which I was surrendered, I cannot, and ought not, be held to answer.

This is, in substance, the objection taken by the prisoner through his counsel (Mr. Devlin), and as I considered that this objection struck at the very foundation of the prosecution, and that it, moreover, originated a question of great public importance, if not of national importance, I granted delay to the prisoner to file a special plea containing his reasons for objecting to the jurisdiction of this court, and to trial upon the several indictments returned against him. This plea was subsequently filed, and in it the prisoner alleges that he resided in Chicago, in the United States, at the time of his arrest, which was made at the instance and upon the demand of the Governor-General; and further, that he was then and there charged with the crime of forgery, and for that offence was his body demanded and surrendered by the United States, so that he might be tried here in Montreal, where the crime was alleged to have been committed. He has also pleaded that he was put into custody of High Constable Bissonnette, and by that officer conducted a prisoner from the province line to the common gaol of this district, where he has since been imprisoned, and that as the crime preferred against him is for *uttering forged paper*, and therefore not the crime of *forgery*, for which he was

extradited, that he ought not to be compelled to answer to this new offence, or put in jeopardy therefor.

To this pleading the Crown put in replication, denying the truth of the allegations contained in the prisoner's plea, and thereby denying, in truth, not only the cause of his extradition, but the very act of extradition itself.

Upon this issue, so perfected, it became necessary for the prisoner to establish, by proof, firstly that he was extradited, and, secondly, that he was extradited for the crime of forgery. A jury was accordingly empanelled to try this preliminary issue, and after having heard the evidence adduced by the prisoner, there being none on behalf of the Crown, they found, by their verdict, that he had proved his plea, and that he was extradited for the crime of forgery. Hence the motion for a new trial, of which I shall now speak. At the argument, the learned counsel for the Crown, and for the private prosecutors, contended that a new trial should be granted. Firstly, because the prisoner peremptorily challenged some of the jurors called to try the issue. Secondly, because the Governor's warrant, produced by the prisoner, afforded no evidence of his extradition, or of any crime for which he was extradited. Thirdly, that the judge erred in instructing the jury to the contrary. These are, I believe, the principal reasons which were relied upon in support of the motion.

Now, referring to the first reason or objection urged by the Crown, it is sufficient to remark that there are authorities for and against the allowance of the right of challenge upon a collateral issue. The authorities which sustain this right are of the highest character, and, for my part, although I am free to admit that the case is not devoid of difficulty, I see no reason to change the opinion I expressed at the trial, particularly as I hold it to be the duty of the judge, in a case wherein there is a conflict of authority, as in the one under consideration, to give the benefit of the doubt to the party accused, besides, as has been well observed by my Brother Badgley, the Crown does not complain of having suffered any injury by the challenges made, neither could I do so, because the jurors who tried the issue were taken from the jury panel, and were qualified to perform the duty required of them. Again, I may mention, that no formal objection was made to the prisoner's challenges at the time of the trial.

Certainly none appears upon the record; on the contrary, it seemed to me that there was an acquiescence in the proceeding on the part of the Crown. Upon this point, however, the majority of the court are with the prisoner. The next, and really the only important point for consideration, as urged by the Crown, is this,—Did the evidence adduced upon the trial of the preliminary issue sufficiently establish the fact of the prisoner's extradition, as set up in his plea, and the crime which was the cause of the demand having been made? His honour Judge Badgley and Mr. Justice Mondelet have stated it to be their opinion that it was utterly insufficient to justify that conclusion.

They maintain that the production and proof of the Governor-General's warrant, charging, as it unquestionably does, the prisoner with the crime of forgery and authorizing and commanding, as it further does, High Constable Bissonnette to inquire and demand of and from the United States, their judges, magistrates, and all other their officers whom it may concern, the body of John Paxton, the prisoner now here, so that he should be extradited for the crime of forgery, ought not to have been given to the jury as evidence of the fact that he was charged with the said crime, or that he was extradited therefor. To my mind, however, it seems perfectly clear that the warrant of His Excellency cannot be thus disregarded, or put aside, particularly when we call to mind that Bissonnette was a witness upon the trial, and that he proved it was under and by virtue of this warrant the prisoner was surrendered and given into his custody by the United States.

Surely it was this warrant that armed Bissonnette with authority to demand and receive the prisoner. Without it his mission would have ended in failure, he could not ask for the arrest of the prisoner, he dare not lay a hand upon him, and yet we are told that this warrant, emanating from the highest authority in the land, bearing the name and seal of the representative of the Sovereign, and without which the prisoner would not be now to-day here, proves nothing, notwithstanding that it distinctly shows upon its face a charge of forgery against the prisoner, a demand for his arrest, and an absolute command to Bissonnette to cause that arrest to be made and to bring his prisoner here. Need I say that I do not concur in the estimate put upon this instrument by my learned brothers, on the contrary, I believe that the warrant itself is the highest and best evidence of what it contains, and that taken in connection with the testimony of Bissonnette, my instructions to the jury, and their finding, were and are well founded in law and in fact.



But setting this question of evidence aside, my learned colleagues have arrived at the conclusion that the verdict of the jury is worthless upon another and entirely distinct ground.

They maintain that the issue between the Crown and the prisoner, as raised by their pleading, was improperly submitted to a jury, and that the question therein involved was one exclusively for the judge to determine. Now let it be borne in mind that this pretension is set up for the first time. It was not urged as a reason for the granting of a new trial by the Crown, it was not made an objection to the trial of the issue by the jury, neither was it adverted to in the argument which took place yesterday. The idea has altogether originated with my learned brothers, and I must say that I think it is not difficult to show that it has not even the shadow of a legal foundation to rest upon. The issue tendered by the prisoner, and joined in by the Crown, was an issue of fact. In so many words he says, I was arrested in the United States upon a charge of forgery, and handed over to High Constable Bissonnette to be brought to Montreal, there to undergo my trial for this offence, and not for the crime for which you have thought proper to indict me. The Crown replies, your allegation is false; you were not arrested for forgery; you were not taken into custody by Bissonnette; you were not brought here from the United States. Are these, I ask, questions of law to be determined by the judge, or matters of fact to be inquired into by a jury? [Could I, sitting here as a judge, undertake to decide that the prisoner's statement was true or untrue?] What means had I of knowing how, when, or under what circumstances the prisoner appeared before me except through the witness box? Until the prisoner pleaded his extradition, and the circumstances under which it took place, I had no knowledge of it, and even then I had only his word for the truth of his assertion, and that was not sufficient. He had a right, however, to prove the truth of what he affirmed, and in no other way could he do this than by the examination of his papers and the intervention of a jury. There was no record before me showing that the prisoner was extradited, and upon which I could pronounce an opinion.

On the contrary, I was informed by the pleading of the Crown that there was no extradition in the prisoner's case; and yet it has been said that I should have decided the fact—a fact which I neither did or could know anything of—without proof, without the examination of a witness, without the assistance of a jury. Surely this can be no more considered within my province, as a judge sitting in a criminal court, than the question whether the prisoner was or was not brought here a prisoner from the United States can be held to be a matter of law? I therefore adhere to my opinion as expressed at the time, and still hold, that the fact raised by the issue was the subject matter of trial by jury—and only triable by that mode. As to the other point raised, namely, the right of the Crown to a new trial, upon a collateral issue arising out of a case of felony, and where the verdict is in favour of the defendant, it is not required that I should discuss it, as the judgment of the majority of the court reject the application for a new trial, and is based upon grounds not contained in the motion or even made the subject of argument. I must say, however, that the Crown is fortunate in the failure of its application; seeing that, by the judgment just rendered it has obtained, not, it is true, what was asked for by the motion, but still all that it could possibly desire, certainly far more than was expected or hoped for. I cannot conclude these remarks without expressing my regret, that the important question raised by the prisoner was not finally and more satisfactorily settled. It was my intention, when the question of law arising out of the fact found by the jury was argued, to have reserved the whole question for the consideration of the Court of Appeal. As I have before stated, it has arisen in our courts for the first time, and is a question of national importance, growing out of a treaty obligation, the provisions of which should be wisely, liberally, and strictly interpreted and ever and always truthfully and faithfully executed.

Entertaining these opinions, it now only remains for me to have my dissent recorded.

The following is the judgment of the court as recorded in the register: "That no new trial shall be had, inasmuch as no such collateral issue, as tendered by said plea of the said John Paxton, should have been submitted to a jury; that the proceedings previously to such motion shall be set aside: that the said John Paxton do plead and answer to the indictment forthwith, and that the trial thereon do proceed."

The prisoner was then ordered to be arraigned on the charge preferred, and being called upon to plead to the indictment said: "I am here, by virtue of an Act of extradition, upon a demand made by His Excellency the Governor-General of the United States, charging me with the crime of forgery; and I protest against being called upon to plead to or answer any other charge than that for which I was so extradited;

“ and I also protest against the unfairness of the Crown in denying the fact of my  
 “ extradition, which is a violation of the good faith that should mark every proceeding  
 “ under the treaty, and thus protesting, I plead not guilty.”

Verdict set aside.

J. R. Ramsay (for Attorney-General).

Pro Regina.

Edward Carter, Q.C., for private prosecutor.

B. Devlin, for prisoner.

(SS).

“ F f.”

Court of Queen's Bench Appeal Side.

June 1/19/1867.

The QUEEN v. JOHN PAXTON.

*Reserved Case.*—Extradition Treaty—Forgery.

The Canada  
Law Journal,  
vol. iii., p. 117.

A fugitive from Canada was surrendered to the United States authorities on a charge of forgery: that being one of the offences enumerated in the treaty. The prisoner was put on his trial and convicted on an indictment for feloniously uttering forged promissory note for the payment of money. The case being reserved on an objection that the prisoner could not be tried for any offence but that for which he had been extradited.

*Held* : That the charge of forgery included the lesser charge and conviction maintained.

This was a case reserved from the Court of Queen's Bench, Crown side, by *Drummond, J.*, under the following circumstances:—

At the term of Queen's Bench, Crown side, on the 24th September 1866, the prisoner, John Paxton, was indicted for feloniously uttering a forged promissory note for the payment of money. On his arraignment, on the 10th of October, a special plea was filed by his counsel, setting out that the prisoner had been extradited from the United States for a different crime, viz., forgery, and that he could not be called upon to answer any other charge.

To this plea there was a demurrer on the part of the Crown, the points urged being as follows:—

1st. That the plea does not allege any matter which by law constitutes any valid plea to the jurisdiction of the court, or in abatement to the indictment, the offence charged being alleged to have been committed within the jurisdiction of the court.

2nd. That the matters alleged in the plea did not constitute any legal ground for not answering the indictment, but could only be taken cognizance of by the executive authority as involving a question of international policy.

3rd. That the crime charged against the prisoner was one of the offences included within the provisions of the treaty.

4th. That the plea omits to specify the particular charge of forgery, and does not show affirmatively that the offence was not connected with the promissory note, upon which the indictment was framed.

5th. That the crime of forgery includes that of which the prisoner is accused.

At the March term 1867, the demurrer was maintained and the plea rejected, the question of law raised by it being reserved.

The prisoner then pleaded not guilty, and the trial having proceeded, a verdict of *guilty* was rendered.

Sentence was deferred till the opinion of the court had been obtained upon the points of law raised by the plea.

Quebec, June 19, 1867. Judgment was rendered by Duval, C. J., Caron, Drummond, and Badgley, J. J., maintaining the verdict.

E. Carter, Q.C., for the private prosecution.

B. Devlin, for the prisoner.

“ O.”

*Note.*—Since the return was first transmitted to the Secretary of State for the Colonies the following remarks must be added:—

1. *J. S. McBean.*—No extradition took place. The prisoner was discharged in the United States on *habeas corpus* on the ground that the Commissioner who conducted the examination there was not duly authorized to act.



2. *Primrose*.—The charges on which the prisoner was tried was murder, upon which he was acquitted. He was at the same time tried upon another indictment containing two counts, one for stealing from the person, and the other for robbery, was found guilty, and sentenced upon the count for stealing and acquitted on the other count.

3. *Broughton*.—Proceedings were abandoned by Government of Ontario, and he was consequently not brought over from the United States.

4. *Dugan* was tried for murder and convicted of manslaughter.

5. *Campbell*.—Tried for forgery and uttering forged paper and convicted.

6. *Bowen*.—Having been surrendered is now, July 1876, in gaol in Canada awaiting trial.

RETURN of all CASES of EXTRADITION of PRISONERS from the UNITED STATES to the DOMINION of CANADA under TREATY between GREAT BRITAIN and the UNITED STATES, between 1st July 1867 and 1st May 1876.

| Name of Prisoner.                   | Charges on which Prisoner was      |                        | Date of Writ of Recipias. | Charges on which Prisoner was tried.      | Whether any Special Stipulation beyond those in Treaty was required or conceded by either Country as a Condition of Surrender. |
|-------------------------------------|------------------------------------|------------------------|---------------------------|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
|                                     | Demanded.                          | Extradited.            |                           |                                           |                                                                                                                                |
| J. S. Bean, Quebec -                | Arson - -                          | Arson - -              | 16 April 1869             | This is the subject of pending inquiries. | None.                                                                                                                          |
| Thomas Primrose, Ontario            | Murder and robbery                 | Robbery - -            | 23 Jan. 1870              | "                                         | "                                                                                                                              |
| E. P. Broughton, Ontario            | Forgery - -                        | Forgery - -            | 2 Oct. 1873               | "                                         | "                                                                                                                              |
| John Dugan, Nova Scotia             | Murder - -                         | Murder - -             | 25 Nov. 1874              | "                                         | "                                                                                                                              |
| Chester D. or E. Campbell, Ontario. | Uttering forged paper.             | Uttering forged paper. | 22 Feb. 1875              | "                                         | "                                                                                                                              |
| James Bowen, Ontario -              | Forgery and uttering forged paper. | Uttering forged paper. | 22 Mar. 1876              | "                                         | "                                                                                                                              |

"P."

REGINA v. TUBBEE.

Law of Extradition—Ashburton Treaty—3 Wm. IV., ch. 6., Imp. Stat. 6 and 7 Vict., ch. 76.—Prov. Stat. 12 Vict., ch. 19. Bigamy—Evidence—Power of Judge in Chambers.

Practice Reports, Upper Canada, vol. i. p. 98.

*Held*: That the Ashburton Treaty contains the whole law of surrender as between Canada and the United States, the statute 3 Wm. IV., ch. 6., being superseded by the Ashburton Treaty and the Imperial Act 6 & 7 Vict., ch. 76., and provincial statute 12 Vict., ch. 19., though in relation to other foreign powers, with whom no treaty or conventional arrangement existed that statute 3 Wm. IV., ch. 6., is still in force.

*Quære*, How far the United States, Lower Canada, or England, would respect the statute 3 Wm. IV., ch. 6., if a fugitive surrendered by Upper Canada to a foreign power were taken through those countries? *Held*, also, that although the surrender must be by the executive government, yet a party committed under a magistrate's warrant may apply for a *habeas corpus*, and that the court or judge may determine whether the case be within the treaty. In a case of bigamy the evidence of the first wife is not admissible, nor is that of the second wife until the first marriage is proved.

A judge in chambers has power to review and decide on the sufficiency of the evidence returned by the committing magistrates, or, if necessary, to hear further testimony.

*Chief Justice Macaulay* said, that having been originally applied to for the writ in chambers on Saturday last, he would have granted it had it not been found desirable to amend the papers on which the application was founded, but that not being able conveniently to remain in chambers until they were corrected, he requested the prisoner's attorney to apply to Mr. Justice Burns who granted the writ, and having doubts upon the subject bailed the prisoner and deferred the argument till this day, in order that he (the Chief Justice) might be present, that he had accordingly attended, and having heard the argument of the learned gentleman engaged in the case, he was of opinion the

prisoner should be discharged, upon the ground that the Ashburton Treaty and the Imperial Act, 6 & 7 Vict., ch. 76., and provincial statute 12 Vict., ch. 19., must be taken virtually to have repealed or superseded the statute 3 Wm. IV., ch. 6., by substituting other provisions though not so comprehensive.

That before the last American War the treaty, called Jay's Treaty, provided for the surrender of certain criminal fugitives, but that it ceased when the war was declared.

That from the peace until the passing of the provincial statute 3 Wm. IV., ch. 6., it rested entirely upon State authority, and the comity of nations, and that the power of surrender on several occasions had been renewed, both in the province of Canada and the United States of America.

That in Lower Canada the power of the executive government to surrender an alien fugitive charged with an aggravated larceny in the United States had been determined by the Court of Queen's Bench of Montreal (A.), and that he believed a like power had been recognized by the courts or judges of Upper Canada, at all events that it had been exercised by the executive government in cases of high criminal turpitude committed against the laws of the United States of America, or of some of those states, and reciprocally by the Government of the United States or of the states of New York, towards Upper Canada.

That it was, however, a power involved in so much doubt that the statute 3 Wm. IV., ch. 6., was passed to confer it expressly, so far as deemed expedient.

That he considered the Act a binding law upon the courts of Upper Canada and that it empowered the executive government of the province to surrender fugitives coming within its provisions, whatever force or effect it might have in any other country, or in other portions of Her Majesty's dominions. That it was still in force in relation to foreign powers with whom no treaty or conventional arrangement existed, but that if a fugitive from the Continent of Europe, or other remote part of the world, was surrendered or taken through the United States or Lower Canada, or by way of England, he could not say how far the statute would be respected by the government or judicial authorities of those countries. He only spoke of its force and validity within our own borders, and as to the mere act of surrender to be conveyed to a foreign jurisdiction.

That was not however the present question.

That he considered the statute 3 Wm. IV., ch. 6., to have limited any authority or discretion that might otherwise have existed upon the principles of the common law or international comity, to cases embraced therein, and to the mode of proceeding therein pointed out, and that on the same principle he considered the late treaty and statutes restrictive upon the 3 Wm. IV., ch. 6.

That the treaty specified certain crimes only, all of which were included in the 3 Wm. IV., ch. 6., and which must so far have been superseded and repealed. That it also prescribed the nature and degree of proof to be adduced, and the circumstances under which criminal fugitives therein mentioned could be surrendered, and he thought must now be regarded as containing the whole law upon the subject and as determining in the gravest and most deliberate form the cases in which it was deemed proper that the power of surrender was to be by the executive government. That although the surrender was to be by the executive government any party committed to prison under a magistrate's warrant, in prosecution of the treaty and the statutes confirming the same, might apply to any of the superior courts or judges for a *habeas corpus*; and that as a matter of judicial cognizance the courts, or in vacation the judges applied to, might determine whether the offender charged came within the treaty; if not, whether a legal power to surrender him reposed in the executive government notwithstanding; and if it did, then whether a case was made that entitled the government to grant such surrender. That in his view of the subject the power to surrender was circumscribed and limited by the treaty and recent statutes and that no discretion at present existed in the government to surrender fugitives in other cases either under the statute 3 Wm. IV., ch. 6., which he looked upon as suspended so far as respected the United States during the substitution of the treaty in question, or by virtue of any common international law prerogative or State authority or comity which might have otherwise prevailed.

The opinion expressed by eminent jurists in the House of Lords during the late debates respecting the Extradition Treaty with France, and on former occasions, is strong to show that the law of England does not recognize the power to surrender alien fugitives from foreign justice in the absence of any treaty or statute providing for and authorizing the same. The *Habeas Corpus* Act, 31 Car. II., ch. 2., sec. 12, in effect prohibits it in the cases of subjects, except fugitives from one part of Her Majesty's dominions to another.

As to the regularity of the writ, he apprehended there was no doubt of the power of



the learned judge to grant it, or of his duty to do so, when it was a grave question whether (as here) the warrant imported on the face of it any offence for which the party was liable to be committed, either for trial in our courts, or in order to be surrendered to a foreign jurisdiction.

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That this was not properly an appeal of the case for purposes of review, although he did not doubt the competency of the judges to decide whether the evidence returned by the committing magistrate is sufficient to establish a case according to the provisions of the statute, and if not to hear additional evidence in further investigation of the case (A).

But as, in his opinion, it was not a case (however distinctly proved) within the provisions of the law of extradition at present in force between the United Empire of Great Britain and Ireland, and including Upper Canada and the United States of America, it was unnecessary to look into the evidence of criminality or to consider whether the prisoner was otherwise within the terms of the statute 3 Wm. IV., ch. 6., as a fugitive felon who has fled to this province or was seeking refuge therein.

That he did not know that a decision in favour of the prisoner's discharge could be reviewed on appeal by the court in banc.; but that he supposed the prosecutrix, if so advised, might renew the application before either of the courts in term time, and in that way obtain the decision of a full bench upon the question which the case involved, or if his learned brother entertained doubts upon the subject, that he might refer the case to the court and bail the prisoner to appear accordingly.

In accordance with this judgment an order was made for the prisoner's discharge.

“Q.”

In re **TRUEMAN B. SMITH.**

Extradition—Counterfeiting—Forgery.

A prisoner was arrested in Upper Canada for having committed in the United States “the crime of forgery, by forging, coining, &c., spurious silver coin,” &c.

Held: 1. That the offence as above charged does not constitute the crime of “forgery” within the meaning of the Extradition Treaty or Act.

2. That it certainly is not the crime of forgery under our law, and therefore the prisoner could not be extradited. Definition of the term “forgery” considered. [Chambers, March 3, 1868.]

This was an application by a prisoner to be discharged on a writ of *habeas corpus*, on the ground that the charge under which he was in custody was not within the Extradition Treaty or the Act of Canada giving it effect.

*Adam Wilson, J.*: The statute of Canada (cap. 89.) applies to the crimes of murder or assault to commit murder, piracy, arson, robbery, *forgery*, or the *utterance of forged paper* committed within the jurisdiction of the United States (see also 24 Vict., c. 6.); and the question is, whether the charge above stated as explained of forging and counterfeiting spurious silver coin, &c. constitutes the offence of forgery within the meaning of the treaty and statute?

I am of opinion it does not, it is unquestionably not forgery by our law here, nor from the evidence given can I assume it to be forgery according to the laws of the state of Iowa, or of the United States of America, if that would make any difference. The statute declares that the offence charged must be such as would, according to the laws of this province, justify the apprehension and committal for trial of the person accused, if the crime charged had been committed here; so that if not an offence of the character charged according to our law the person is not to be apprehended, committed, or delivered over to the foreign government; no comity prevails in such a case. In re Windsor, 6 New Rep. 96; 10 Cox, C. C. 118, 11 Jur. N. S., 807.

Forgery is defined in 4 Bl. Com. 247, to be “the fraudulent making or alteration of a writing to the prejudice of another man's right;” and this is substantially the definition accepted and approved of in Reg v. Smith, 1 Dearsley and Bell 566, in which counsel have arrayed the definitions of different authors of this offence, to which may be added Bac Abr., “forgery.”

Hawk: P. C., in book 1, c. 70., sec. 1, it is described to be “an offence in falsely and fraudulently making or altering any matter of record or any other authentic matter of a public nature, as a parish register or any deed or will.”

In Reg. v. Closs, 1 Dearsley and Bell 460, Cockburn, C. J., said, a “forgery must be of some document or writing,” and therefore putting an artist's name on the corner of a

Practice Re-  
ports, Upper  
Canada, vol. iv.  
p. 215.

picture in order to pass it off as an original picture by that artist was held not to be forgery.

There is no case where the making of false coin has been determined to be forgery; and it is not so by our statute.

Such an offence is here a misdemeanor for the first act and a felony for the second; but it is not the offence of forgery at all.

The decision of *Re Dubois, otherwise Coppin*, 12 Jur. N. S. 867, shows that this is the mode in which the treaty and statute are to be treated; and our own statute reciting the treaty is almost conclusive evidence that the "forgery" referred to is the offence of that name well understood in the United States and in this province, and to make it plainer, it relates also to "the utterance of forged paper." The prisoner must be discharged.

Prisoner discharged.

Department of Justice, Ottawa,  
July 24, 1876.

THE undersigned has the honour to report that, since the dispatch of his memorandum of this date, transmitting a return to an address of the House of Commons in reference to matters of extradition, there has been received from the Lieutenant-Governor of British Columbia a communication upon the same subject.

Copies of that communication, and the papers transmitted therewith, are now submitted to your Excellency for the purpose of being referred to the Secretary of State for the Colonies as an appendix to the return above mentioned.

R. W. SCOTT,  
Acting Minister of Justice.

British Columbia, Government House,  
10th July 1876.

SIR,

WITH reference to your despatch of the 31st May last, the receipt of which was acknowledged by me on the 20th ultimo, calling for certain returns of particulars of all cases of extradition of prisoners from or into British Columbia under the treaty between Great Britain and the United States previous to the union of this province with the dominion.

I have the honour to enclose a report from the Hon. the Attorney-General with two sub-enclosures conveying all the information that can now be furnished in reply to your application.

I regret that this return should be so incomplete as to render it in my estimation valueless as to details.

Previous to the union of British Columbia with Canada all business connected with extradition was transacted through the Governor's office, and unfortunately no records of correspondence on such matters or of warrants issued have been retained in this office.

Search has therefore been made at the offices of the stipendiary magistrates to whom such warrants were likely to have been addressed, and has occasioned the delay which, I regret, has taken place in my being in a position to forward you the returns herewith enclosed, and which are even now, I consider, not to be depended on.

I am, &c.,

To the Honourable  
The Secretary of State for Canada, Ottawa.

(Signed) JOSEPH W. TRUTCH.

Attorney-General's Office,  
10th July 1876.

SIR,

I HAVE the honour to report, in answer to the Secretary of State's despatch referred to me by your Excellency, calling for a return of all cases of extradition of prisoners under the treaty between Great Britain and the United States between 9th August 1842 and the date of confederation with the dominion, that as no records whatever can be found in the Governor's office relating to the returns asked for, search has been made in the offices of the stipendiary magistrates and in the gaol records, from which the return herewith enclosed has been prepared.

This return, however, cannot be regarded as complete or exact in particulars.

I am, &c.,

His Excellency  
The Lieutenant-Governor.

(Signed) A. C. ELLIOTT,  
Attorney-General.



RETURN of all CASES of EXTRADITION of PRISONERS from the PROVINCE of BRITISH COLUMBIA and VANCOUVER ISLAND respectively to the UNITED STATES under TREATY between GREAT BRITAIN and the UNITED STATES between 9th August 1842 and 20th July 1871.

| Name of Prisoner. | Charges on which Prisoner was |             | Date of Warrant of Extradition. | Charges on which Prisoner was Tried. | Whether any Special Stipulation beyond those in Treaty was required or conceded by either Country as a Condition of Surrender. |
|-------------------|-------------------------------|-------------|---------------------------------|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
|                   | Demanded.                     | Extradited. |                                 |                                      |                                                                                                                                |

BRITISH COLUMBIA.

|                 |   |   |        |   |        |   |                             |        |   |       |
|-----------------|---|---|--------|---|--------|---|-----------------------------|--------|---|-------|
| Boom Helm       | - | - | Murder | - | Murder | - | Between Jan. and Mar. 1864. | Murder | - | None. |
| Thomas Douhalme | - | - | "      | - | "      | - | Sept. 1866                  | "      | - | "     |
| John N. Young   | - | - | "      | - | "      | - | " 1870                      | "      | - | "     |

VANCOUVER ISLAND.

|                                               |                 |   |                   |                 |                   |   |              |                   |   |   |       |
|-----------------------------------------------|-----------------|---|-------------------|-----------------|-------------------|---|--------------|-------------------|---|---|-------|
| John McDuff, <i>alias</i> Casserty            | Arson           | - | -                 | Arson           | -                 | - | 18 Dec. 1861 | Arson             | - | - | None. |
| Lawrence Dulligan, <i>alias</i> Broekie Jack. | Highway robbery |   |                   | Highway robbery |                   |   | 16 Nov. 1864 | Highway robbery   |   |   | "     |
| George Smith                                  | -               | - | "                 |                 | "                 |   | " "          | " "               |   |   | "     |
| C. M. Spalding                                | -               | - | Attempt to murder |                 | Attempt to murder |   | 19 Oct. 1869 | Attempt to murder |   |   | "     |

The above return is believed to be accurate as regards the actual cases of extradition from British Columbia and Vancouver Island. No regular record having been kept, however, there may be some inaccuracy in the dates or exact details.

(Signed) A. C. ELLIOTT,  
Attorney-General.

RETURN of all CASES of EXTRADITION of PRISONERS from the UNITED STATES to the PROVINCES of BRITISH COLUMBIA and VANCOUVER ISLAND respectively under TREATY between GREAT BRITAIN and the UNITED STATES between 9th August 1842 and 20th July 1871.

Nil.

(Signed) A. C. ELLIOTT,  
Attorney-General.

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NORTH AMERICA. No. 5 (1876).

CORRESPONDENCE

RESPECTING THE

NON-ADMISSION OF FISH AND FISH OILS,

THE PRODUCE OF

BRITISH COLUMBIA,

INTO

THE UNITED STATES,

FREE OF DUTY.

UNDER THE TREATY OF WASHINGTON, MAY 8, 1871.

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*Presented to both Houses of Parliament by Command of Her Majesty.*  
1876.

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LONDON:

PRINTED BY HARRISON AND SONS.

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Correspondence respecting the Non-admission of Fish and Fish Oils, the produce of British Columbia, into the United States, Free of Duty, under the Treaty of Washington of May 8, 1871.

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No. 1.

*Sir E. Thornton to the Earl of Derby.—(Received April 26.)*

My Lord,

*Washington, April 12, 1875.*

I HAVE the honour to inclose copy of a despatch which I have received from the Governor-General of Canada, and of its inclosures, relating to the refusal of the United States' Customs authorities to allow the importation free of duty of fish and fish oil from British Columbia, in accordance with the provisions of Article XXI of the Treaty of May 8, 1871.

His Excellency requests me to take such action in the matter as I may think proper; but as British Columbia did not form a part of the Dominion of Canada when the above-mentioned Treaty was signed, I hesitate to make any representation to the Government of the United States upon the subject until I shall receive your Lordship's instructions to do so.

It is, however, true that the United States' Act of Congress of March 1, 1873, when British Columbia certainly did form a part of the Dominion of Canada, enacts that fish oil and fish, being the produce of the fisheries of the Dominion of Canada, and of Prince Edward Island, shall be admitted into the United States free of duty.

I have, &c.  
(Signed) EDWD. THORNTON.

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Inclosure 1 in No. 1.

*The Earl of Dufferin to Sir E. Thornton.*

Sir,

*Government House, Ottawa, April 8, 1875.*

I HAVE the honour of inclosing, for such action as you may think proper, a copy of an approved report of a Committee of the Privy Council respecting the denial on the part of the United States' authorities of the right of the Province of British Columbia to participate in those provisions of the Treaty of Washington under which fish and fish oil, or the produce of Canadian fisheries, are entitled to admission into the United States free of duty.

I have forwarded a copy of the Minute of Council for the information of the Secretary of State for the Colonies.

I have, &c.  
(Signed) DUFFERIN.

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## Inclosure 2 in No. 1.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General, on the 1st day of April, 1875.*

ON a Report dated 31st March, 1875, from the Honourable the Minister of Customs, representing that he has been given to understand that the United States' Customs Officers at San Francisco and other ports deny the right of the Province of British Columbia to participate in the terms of the Washington Treaty, which provide for the admission free of duty of fish and fish oil, &c., the product of the Canadian Fisheries, and demand and collect duties upon the same as if the said Treaty had not been made, and further representing that the interpretation given to the law of this Dominion, which was enacted to give effect to the said Washington Treaty, is, and always has been, that fish and fish oils, &c., as therein provided, are equally entitled to free entry in British Columbia, as in all other Provinces of the Dominion, and he submits a copy of the opinion of the Honourable the Minister of Justice on the subject, dated 5th February, 1874. He therefore requests that the case be brought under the notice of Her Majesty's Ambassador to the United States at Washington, with a view to the adoption of proper measures for the removal of the illegal restrictions imposed on the imports of such articles from British Columbia into the United States.

The Committee concur in the above Report, and advise that a copy of this Minute and of the report of the Minister of Justice therein referred to, be transmitted to Sir Edward Thornton.

Certified,  
(Signed) W. A. HIMSWORTH,  
Clerk, Privy Council, Canada.

## Inclosure 3 in No. 1.

*Report by the Minister of Justice of Canada.*

*Department of Justice, February 5, 1874.*

REFERENCE is made by the Department of Marine and Fisheries as to whether fish oils from the Province of British Columbia are admissible into United States' markets duty free under the Treaty of Washington.

By Article XXI of the Treaty of Washington, fish and fish oil, the produce of the United States' fisheries or of the Dominion of Canada, shall be admitted into each country free of duty.

By Article XXXIII, Article XXI, &c., shall take effect as soon as the laws required to carry them into operation shall have been passed by the Imperial and Canadian Parliaments on the one hand, and the United States' Congress on the other.

The Treaty itself bears date the 8th May, 1871, and is, as to these clauses, in effect a proposition of the Commissioners for free exchange of the commodities named, should each country see fit to pass laws covering the suggestion.

The real agreement and its terms are to be looked for in the Legislative action of the two countries, and these consist of—

1st. Statutes, Canada, 1873, chapter 2, passed 14th June, 1872; section 2 of which provides for the admission into Canada, free of duty, of fish and fish oils, the produce of the fisheries of the United States.

At the time of the passing of this Act, the Province of British Columbia was a part of Canada, having been admitted 20th July, 1871; was represented in Parliament; and, therefore, there being no restriction in the Act, Canada was bound by it to admit into the ports of British Columbia United States' fish and fish oils.

2nd. Act of Congress, United States; approved 1st March, 1873. It is enacted that whenever the President of the United States shall receive satisfactory evidence that the Parliament of Canada has passed laws on its part to give full effect to Article XXI of the Treaty, "the President is to issue his Proclamation to that effect, and thereafter all fish oil and fish, the produce of Canada, shall be admitted into United States free of duty."

The President's Proclamation, as above required, was published July 1, 1873.

There being no restriction in the Act of Congress, it must be taken as applying to what at the time constituted Canada; and as British Columbia then formed a part of



Canada, the production of its fisheries in fish and fish oil are, entitled to admission into United States free of duty.

(Signed) H. BERNARD,  
Deputy Minister of Justice.

I concur,  
(Signed) A. A. DORION,  
Minister of Justice.

No. 2.

*Mr. Herbert to Lord Tenterden.—(Received April 28.)*

Sir, *Downing Street, April 27, 1875.*

WITH reference to Mr. Bourke's reply to a question asked by Sir A. Monck in the House of Commons on the 9th instant, I am directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, a copy of a despatch from the Governor-General of Canada, inclosing a Report of a Committee of the Privy Council respecting the denial on the part of the United States' authorities of the right of the Province of British Columbia to participate in those provisions of the Treaty of Washington under which fish and fish oil, &c., the produce of Canadian fisheries, are entitled to admission into the United States free of duty.

Lord Derby may probably think it desirable to take the opinion of the Law Officers of the Crown in regard to this matter, but before doing so, Lord Carnarvon thinks it may be well to await any observations which Sir. E. Thornton may have to offer on the subject.

I am, &c.  
(Signed) ROBERT G. W. HERBERT.

Inclosure 1 in No. 2.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord, *Government House, Ottawa, April 8, 1875.*

I HAVE the honour to forward, for your Lordship's information, a copy of a report of a Committee of my Privy Council, approved by myself, respecting the denial on the part of the United States' authorities of the right of the Province of British Columbia to participate in those provisions of the Treaty of Washington, under which fish and fish oil, &c., the product of Canadian fisheries, are entitled to admission into the United States free of duty.

In accordance with the request of the Privy Council I have transmitted a copy of this report to Sir E. Thornton, Her Majesty's Minister at Washington.

I have, &c.  
(Signed) DUFFERIN.

Inclosure 2 in No. 2.

*Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General in Council, on the 1st day of April, 1875.*

[See Inclosure 2 in No. 1.]

Inclosure 3 in No. 2.

*Report by Minister of Justice of Canada, dated February 5, 1874.*

[See Inclosure 3 in No. 1.]

## No. 3.

*Lord Tenterden to Mr. Herbert.*

Sir

*Foreign Office, May 6, 1875.*

WITH reference to your letter of the 27th ultimo, forwarding a copy of a despatch from the Governor-General of Canada and a report of the Committee of the Privy Council of the Dominion, respecting the denial on the part of the United States' authorities of the right of the Province of British Columbia to participate in those provisions of the Treaty of Washington, under which fish and fish oil, &c., the produce of Canadian fisheries, are entitled to admission into the United States free of duty, I am directed by Lord Derby to transmit to you, to be laid before Lord Carnarvon, a copy of a despatch from Sir E. Thornton on the subject;\* and I am to request you to point out to his Lordship that the United States' Act, giving effect to the provisions of the Treaty, was passed on the 1st of March, 1873, and that the report of the Canadian Department of Justice on the exclusion of the produce of the Columbian fisheries is dated the 5th of February, 1874, while the report of the Committee of the Privy Council of the Dominion was not made until the 1st ultimo.

Lord Derby is of opinion that before taking any steps in this matter it would be desirable to have some explanation of the delay which has occurred in bringing it to the notice of Her Majesty's Government.

I am, &c.  
(Signed) TENTERDEN.

## No. 4.

*Mr. Malcolm to Lord Tenterden.—(Received May 7.)*

Sir,

*Downing Street, May 7, 1875.*

WITH reference to my letter of the 27th of April, inclosing a copy of a despatch from the Governor-General of Canada, respecting a question as to the right of the Province of British Columbia to participate in those provisions of the Treaty of Washington, under which fish and fish oil, the produce of the Canadian fisheries, are entitled to admission into the United States free of duty, I am directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, a copy of a further despatch from Lord Dufferin, inclosing the reply of Sir Edward Thornton to the communication addressed to him on the subject by the Governor-General of the Dominion.

I am, &c.  
(Signed) W. R. MALCOLM.

## Inclosure 1 in No. 4.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord,

*Government House, Ottawa, April 19, 1875.*

IN my despatch of the 8th instant I had the honour of transmitting to your Lordship a copy of an Order of the Privy Council relative to the refusal of the United States Authorities to admit fish and fish-oil from British Columbia duty free, in accordance with Article XXI of the Treaty of Washington.

I had also the honour of informing you that, by the wish of my Government, I had communicated a copy of the report of Council to Her Majesty's Minister at Washington.

I now beg to inclose for your Lordship's information, a copy of the reply which I have received from Sir Edward Thornton upon the subject.

I have, &c.  
(Signed) DUFFERIN.



## Inclosure 2 in No. 4.

*Sir E. Thornton to the Earl of Dufferin.*

My Lord,

Washington, April 12, 1875.

I HAVE the honour to acknowledge the receipt of your Excellency's despatch of the 8th instant, relative to the refusal of the United States' Authorities to admit fish and fish-oil from British Columbia duty free, in accordance with Article XXI of the Treaty of May 8th, 1871.

As British Columbia was not, at the time of the signing of that Treaty, a part of the Dominion of Canada, I do not feel justified in making a representation upon the subject to the United States' Government without instructions to that effect from the Earl of Derby. It would, however, appear that, although British Columbia may not be entitled to that privilege by the provisions of the Treaty, it is so with reference to the Act of Congress of March 1st, 1873.

I have, &amp;c.

(Signed) EDWD. THORNTON.

## No. 5.

*Mr. Malcolm to Lord Tenterden.—(Received May 14.)*

Sir,

Downing Street, May 13, 1875.

IN reply to your letter of the 6th instant, respecting the denial on the part of the United States' Authorities of the right of the Province of British Columbia to participate in those provisions of the Treaty of Washington under which fish and fish-oil, &c., the produce of the Canadian fisheries, are entitled to admission into the United States free of duty, I am directed by the Earl of Carnarvon to acquaint you, for the information of the Earl of Derby, that his Lordship has addressed an inquiry to the officer administering the Government of Canada, as to the delay in bringing forward this question in compliance with his Lordship's suggestion.

I am desired, however, to state that, notwithstanding any delay which may have taken place in bringing the matter forward, it would seem very desirable to have British Columbian produce included within the provisions of the Treaty, if this can be effected.

I am, &amp;c.

(Signed) W. R. MALCOLM.

## No. 6.

*Sir E. Thornton to the Earl of Derby.—(Received May 23.)*

My Lord,

Washington, May 10, 1875.

WITH reference to my despatch of the 12th ultimo, I have the honour to inclose copies of a further despatch, and of its inclosure which I have received from the Governor-General of Canada, relative to the refusal by the United States' Customs Authorities to admit fish and fish-oil free of duty into the United States from British Columbia, as the Canadian Government thinks that they ought to do, in accordance with the Article XXI of the Treaty of Washington.

The inclosure in Lord Dufferin's despatch which is a report of a Committee of the Privy Council of Canada of the 30th ultimo, contains a very clear statement of the case, but it seems to me that the question simply resolves itself into whether the United States' Government must be guided by the Treaty when British Columbia did not form a part of the Dominion of Canada, or by the Act of Congress of March 1, 1873 (*vide* revised Statutes, section 2,506) when it did form a part of the Dominion.

I am obliged, however, to acknowledge that I received no official announcement before the date of this Act, from the Governor-General of Canada, and made none to the Government of the United States, that British Columbia had been incorporated into the Dominion of Canada, nor am I aware that the fact has ever been officially communicated by Her Majesty's Government or by any British Authority to the United States' Government.

As I have already asked for your Lordship's instructions upon this matter in my despatch above mentioned, I do not consider that it will be expedient to make any representations to Mr. Fish, until I shall receive them.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure 1 in No. 6.

*The Earl of Dufferin to Sir E. Thornton.*

Sir,

*Government House, Ottawa, May 3, 1875.*

I HAVE the honour of communicating to you, for your information, a copy of a further order of the Privy Council of Canada, relative to the refusal of the United States' authorities to admit fish and fish oil from British Columbia duty free, in accordance with Article XXI. of the Treaty of Washington.

I have, &c.  
(Signed) DUFFERIN.

Inclosure 2 in No. 6.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General, on the 30th day of April, 1875.*

THE Committee of Council have had under consideration the despatch of Her Majesty's Minister at Washington, dated 12th April, 1875, to your Excellency, in answer to a despatch inclosing the Minute of Council of the 1st April, 1875, relative to the refusal of the United States' authorities to admit fish and fish oil from British Columbia duty free, in accordance with Article XXI of the Treaty of Washington.

In his despatch Sir E. Thornton declines to make any representations on the subject to the United States' Government without instructions to that effect from the Earl of Derby, alleging that he would not be justified in doing so, as British Columbia was not, at the time of the signing of that Treaty, a part of Canada.

The Treaty bears date the 8th May, 1871, and Article XXXIII recites that Articles from XVIII to XXV inclusive, and Article XXX. shall take effect "as soon as the laws required to carry them into operation shall have been passed by the Imperial Parliament of Great Britain, by the Parliament of Canada, and the Legislature of Prince Edward Island on the one hand, and by the Congress of the United States on the other."

British Columbia became part of the Dominion of Canada on the 20th July, 1871, and the Act of the Parliament of Canada giving effect to the Washington Treaty as respects Canada, was passed on the 14th June, 1872, British Columbia being then a part of the Dominion of Canada, and represented in Parliament.

The second section of that Act provided that "fish oil and fish of all kinds (except fish of the inland lakes, and of the rivers falling into them, and except fish preserved in oil) being the produce of the fisheries of the United States shall be admitted into Canada free of duty."

It is clear that under this provision fish, the produce of the United States' fisheries, would be admitted free into British Columbia as forming part of Canada.

By section 2,506 of the Act of Congress, entitled "duties upon imports passed on the 1st of March, 1873," it is provided that,

"Whenever the Resident of the United States shall receive satisfactory evidence that the Imperial Parliament of Great Britain, the Parliament of Canada, and the Legislature of Prince Edward Island have passed laws on their part to give full effect to the provisions of the Treaty between the United States and Great Britain, signed at the City of Washington on the 8th day of May, 1871, as contained in Articles XVIII to XXV inclusive, and Article XXX of the said Treaty, he is hereby authorized to issue his proclamation declaring that he has such evidence, and therefore from the date of such proclamation, and so long as the said Articles XVIII to XXV inclusive, and Article XXX of the said Treaty shall remain in force, according to the terms and conditions of Article XXXIII of the said Treaty, all fish oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil) being the produce of the fisheries of the Dominion of Canada, or of Prince Edward Island, shall be admitted into the United States free of duty."

The President's Proclamation, issued on the 1st July, 1873, nearly two years after



British Columbia had become a part of the Dominion of Canada. From the language of the section above quoted it is clear that fish and fish-oil, the produce of the Dominion of Canada as then constituted, were to be admitted into the United States free of duty. In the opinion of the Committee it is susceptible of no other construction; and they do not hesitate to express the belief that when the subject shall be brought under the notice of the United States' Government that opinion will be concurred in.

The point under consideration was referred in February, 1874, to the Honourable A. A. Dorion, the present Chief Justice of Quebec, and then Minister of Justice, and his opinion was in accordance with that expressed in this Minute.

As an element in the consideration of this subject, it is worthy of note that the XXVIth Article of the Treaty providing for the free navigation of the River St. Lawrence also makes provision for the free navigation of one of the rivers of British Columbia, the Stikine, which flows through the territory of both countries. This evidence, taken in conjunction with the fact that provision is also made in the Treaty for Prince Edward Island and Newfoundland, the only other portions of British territory on the Continent, it may fairly be assumed that, apart from the effect of subsequent legislation, it was the intention of the framers of the Treaty to make it applicable to all parts of British America and the United States.

The Committee advise that a copy of this Minute, the Minute of the 1st of April, 1875, and the correspondence with Her Majesty's Minister at Washington, together with the opinion of the Honourable A. A. Dorion, be transmitted by your Excellency to the Imperial Government, with the request that the United States' Government be moved to consider the subject herein referred to, with a view to the removal of the grounds of complaint.

Certified,  
(Signed) W. A. HIMSWORTH,  
Clerk, Privy Council, Canada.

Inclosure 3 in No. 6.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council, on the 1st April, 1875.*

[See Inclosure 2 in No. 1.]

Inclosure 4 in No. 6.

*Report by the Minister of Justice of Canada, dated February 5, 1874.*

[See Inclosure 3 in No. 1.]

No. 7.

*Mr. Lister to Mr. Malcolm.*

Sir,

*Foreign Office, May 26, 1875.*

WITH reference to your letter of the 13th instant I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington,\* in regard to the admission of fish and fish-oil, free of duty, into the United States from British Columbia.

I am, &c.  
(Signed) T. V. LISTER.

No. 8.

*Mr. Herbert to Lord Tenterden.—(Received May 29.)*

Sir,

*Downing Street, May 28, 1875.*

WITH reference to my letters of the 27th of April, and 7th and 13th instant, and to yours of the 6th of this month, respecting the denial on the part of the United States' authorities of the right of the Province of British Columbia to participate in

\* No. 6.

those provisions of the Treaty of Washington under which fish and fish-oil, the produce of the Canadian fisheries, are entitled to admission into the United States free of duty, I am directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, a copy of a despatch from the Governor-General of the Dominion, inclosing a further Report of a Committee of the Privy Council, urging that representations be made to the United States' Government, with a view to the removal of the grounds of complaint.

The question is one which requires, it is clear, careful consideration, but unless the Earl of Derby is advised that the contention of the Canadian Government is one to which it is impossible for the Imperial Government to be a party, Lord Carnarvon would suggest, for Lord Derby's consideration, whether Sir E. Thornton might not be instructed to make a communication, in the terms of the Report of the Privy Council of Canada, or the consideration of the United States Government.

In the event of Lord Derby being of opinion that this course may properly be taken, Lord Carnarvon thinks that it might be advisable that the representation should be made to the United States Government at once, and without waiting for the reply from the Canadian Government as to the delay which appears to have occurred in Canada in bringing the question forward.

His Lordship would be glad to be informed at Lord Derby's early convenience of the course which he would propose to take in the matter.

I am, &c.  
(Signed) ROBERT G. W. HERBERT.

Inclosure 1 in No. 8.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord,

*Government House, Ottawa, May 1, 1875.*

WITH reference to my despatches of the 8th and 19th of April, on the subject of the refusal by the United States' authorities to admit fish and fish-oil from British Columbia duty free, in accordance with the Treaty of Washington, I have the honour to transmit herewith a copy of a further Report of Council, of which my Government urge that representations be made to the United States Government, with a view to the removal of the grounds of complaint.

I have, &c.  
(Signed) DUFFERIN.

Inclosure 2 in No. 8.

*Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General in Council, on the 30th day of April, 1875.*

[See Inclosure 2 in No. 6.]

Inclosure 3 in No. 8.

*Report by Minister of Justice, dated February 5, 1874.*

[See Inclosure 3 in No. 1.]

Inclosure 4 in No. 8.

*Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General in Council, on the 1st April, 1875.*

[See Inclosure 2 in No. 1.]



## Inclosure 5 in No. 8.

*Sir E. Thornton to the Earl of Dufferin, April 12, 1875.*

[See Inclosure 2 in No. 2.]

## No. 9.

*Mr. Lister to Mr. Herbert.*

Sir,

*Foreign Office, June 4, 1875.*

I HAVE laid before the Earl of Derby your letter of the 23rd ultimo, forwarding a further communication from the Canadian Government respecting the refusal of the United States' Customs authorities to admit free of duty fish and fish-oil the produce of British Columbia, and suggesting that Sir E. Thornton should at once be instructed to make a representation on the subject to the United States' Government, and I am directed by his Lordship to state to you in reply, for the information of the Earl of Carnarvon, that he has thought it desirable, before taking any other steps in the matter, to refer the papers to the Law Officers for their opinion.

I am, &amp;c.

(Signed) T. V. LISTER.

## No. 10.

*Mr. Meade to Lord Tenterden:—(Received August 5.)*

Sir,

*Downing Street, August 5, 1875.*

WITH reference to your letter of the 6th of May, to the reply from this office of the 13th of that month, and to subsequent correspondence respecting the denial of the United States' authorities of the right of the Province of British Columbia to participate in those provisions of the Treaty of Washington, under which fish and fish oil, &c., the produce of the Canadian Fisheries, are entitled to admission into the United States free of duty, I am directed by the Earl of Carnarvon to transmit to you for the information of the Earl of Derby, a copy of a despatch from the Administrator of the Government of Canada, with its inclosure, in explanation of the delay which occurred in bringing this question to the notice of Her Majesty's Government.

I am, &amp;c.

(Signed) R. H. MEADE.

## Inclosure 1 in No. 10.

*Lieutenant-General Halcy to the Earl of Carnarvon.*

My Lord,

*Halifax, United States, July 5, 1875.*

WITH reference to your Lordship's despatch May 10th, relative to the exclusion of British Columbia by the United States Customs authorities from the benefit of importing fish and fish oil free of duty into the United States, under Article XXI of the Treaty of May 8th, 1871, in which your Lordship asked for some explanation of the delay, which was noticeable between the action complained of on the part of the United States, and the Report upon this action of the Canadian Department of Justice and of my Privy Council, I have now the honour to inclose, for your Lordship's information a minute of Council upon the question.

I have, &amp;c.

(Signed) W. O'G. HALY.

## Inclosure 2 in No. 10.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Administrator of the Government, on the 25th day of June, 1875.*

THE Committee of Council have had under consideration the despatch of the Right Honourable the Earl of Carnarvon of 13th May last, covering copy of Sir Edward

Thornton's despatch of 12th April, addressed to the Right Honourable the Earl of Derby, relating to the refusal of the United States' Customs authorities to allow the importation, free of duty, of fish and fish oil from British Columbia, in accordance with the provisions of Article XXI of the Treaty of May 8th, 1871, also inclosing a copy of a despatch from the Foreign Office to the Colonial Office, dated 6th May, 1875, calling attention to the fact that, while the Act giving effect to the provisions of the Treaty was passed on the 1st March, 1873, and the Report of the Canadian Department of Justice on the subject is dated 5th February, 1874, the Report of the Committee of the Privy Council of the Dominion was not made until the 1st April, of which delay in taking action in the matter Lord Derby considers it desirable to have some explanation before bringing it to the notice of Her Majesty's Government.

The Honourable Mr. Scott, acting for the Minister of Customs, to whom the despatch with inclosures has been referred, reports that he is not aware of any special cause for the delay in question, but believes it to have arisen from the fact that the original complaint upon which the question arose was not succeeded by other complaints, and the matter was overlooked in the great press of other public business, but as the main point required is to obtain a clear and authoritative decision as to the right of British Columbia to participate in the provisions of the Treaty of Washington in the free admission into the United States of fish and fish-oil the produce of that Province, he recommends that this explanation be forwarded to the Earl of Carnarvon for transmission to the Foreign Office, with the desire that proper steps may be taken to establish the said rights of British Columbia.

The Committee concur in the above recommendation, and submit the same for your Excellency's approval.

Certified,  
(Signed) W. A. HIMSWORTH,  
Clerk, Privy Council, Canada.

No. 11.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, August 11, 1875.*

I REFERRED to the Law Officers of the Crown your despatch of the 12th of April, together with other papers on the same subject, respecting the refusal of the United States' Customs authorities to allow the importation free of duty of fish and fish-oil from British Columbia in accordance with the provisions of Article XXI of the Treaty of Washington of May 8, 1871, and I am advised that the words "Dominion of Canada," in the XXIst Article of the Treaty in question must be governed by the state of things existing in May, 1871, and cannot now receive a wider construction from the fact that additional territory has since been added to the Dominion. The contention of the Canadian Privy Council, founded upon the XXVith Article of the Treaty of Washington, cannot be allowed, and no inference applicable in any way to the present case can be drawn from the provision that the navigation of certain specified rivers is to be free, but some confirmation of the view taken by the United States' Customs-house is given by Articles XVIII and XIX of the Treaty, which apply only to fisheries on the Eastern or Atlantic side of the Continent. Article XXIII provides the means by which the several articles named are to be carried into operation, but does not provide for extending the meaning or operation of those articles, and I am of opinion that the Act of Congress of the 1st of March, 1873, and the Act of the Parliament of Canada of the 14th June, 1872, must both be construed with reference to the "Dominion of Canada," as that Dominion was on the 8th of May, 1871, and under these circumstances I cannot instruct you to bring the matter to the notice of the United States' Government.

I am, &c.  
(Signed) DERBY.



## No. 12.

*Lord Tenterden to Mr. Meade.*Sir, *Foreign Office, August 11, 1875.*

I AM directed by the Earl of Derby to transmit to you, for the information of the Earl of Carnarvon, the accompanying copy of a despatch which has been addressed to Sir E. Thornton,\* on the subject of the refusal of the United States' Customs authorities to allow the importation, free of duty, of fish and fish-oil from British Columbia under the XXIst Article of the Treaty of Washington of May 8, 1871.

I am, &amp;c.

(Signed) TENTERDEN.

## No. 13.

*The Earl of Derby to Sir E. Thornton.*Sir, *Foreign Office, August 14, 1875.*

I INCLOSE for your information copy of a letter from the Colonial Office on the subject of the importation into the United States, free of duty, of fish and fish-oil from British Columbia.†

I am, &amp;c.

(Signed) DERBY.

## No. 14.

*Mr. Herbert to Lord Tenterden.—(Received August 20.)*

(Extract.)

*Downing Street, August 19, 1875.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 11th instant, inclosing a copy of a despatch addressed by the Earl of Derby to Sir Edward Thornton on the subject of the refusal of the United States Customs authorities to allow the importation, free of duty, of fish and fish-oil from British Columbia, the XXIst Article of the Treaty of Washington.

Lord Carnarvon has communicated to the officer administering the Government of Canada the substance of the Report of the Law Officers on this question in a despatch of which a copy is inclosed.

## Inclosure in No. 14.

*The Earl of Carnarvon to the Officer Administering the Government of Canada.*Sir, *Downing Street, August 12, 1875.*

HER Majesty's Government have been in communication with the Law Officers of the Crown on the subject of your despatch of the 1st of May last, inclosing a Report of the Privy Council on the subject of the refusal of the United States Customs authorities to allow the importation, free of duty, of fish and fish-oil from British Columbia, under the XXIst Article of the Treaty of Washington, and they are advised that the words "Dominion of Canada" in the Treaty of Washington, Article XXI, must be governed by the state of things existing in May, 1871, and cannot now receive a wider construction, from the fact that additional territory has since been added to the Dominion.

2. Her Majesty's Government have been further advised that it would not be possible to uphold the argument contained in the Report of the Committee of Privy Council of the 30th of April, 1875, upon the XXVth Article of the Treaty of Washington, and they fear that no inference applicable in any way to the present case, can be drawn from the provision that the navigation of certain specified rivers is to be free.

3. On the other hand it would appear that some confirmation of the view taken by the United States' Customs-house may be deemed to be given by Articles XVIII and

\* No. 11.

† No. 10.

XIX of the Treaty, which apply only to fisheries on the Eastern or Atlantic side of the Continent.

4. The Article XXXIII provides the means by which the several Articles named are to be carried into operation, but does not provide for extending the meaning or operation of these Articles, and Her Majesty's Government are advised that the Act of Congress of the 1st March, 1873, and the Act of the Parliament of Canada of the 14th of June, 1872, must both be construed with reference to the "Dominion of Canada," as that Dominion was on the 8th of May, 1871.

5. I regret very much that for these reasons it has not appeared possible to instruct Sir E. Thornton to bring the matter before the United States' Government as proposed by the Dominion Government.

I have, &c. '  
(Signed) CARNARVON.

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NORTH AMERICA. No. 5 (1876).

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CORRESPONDENCE respecting the Non-Admission  
of Fish and Fish Oils, the produce of British  
Columbia, into the United States, Free of Duty,  
under the Treaty of Washington, May 8, 1871.

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*Presented to both Houses of Parliament by Com-  
mand of Her Majesty. 1876.*

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LONDON:

PRINTED BY HARRISON AND SONS.



CORRESPONDENCE

RESPECTING THE

IMPOSITION OF DUTY

BY

THE UNITED STATES' AUTHORITIES

ON

TIN CANS

CONTAINING

FISH FROM CANADA.

---

*Presented to both Houses of Parliament by Command of Her Majesty.*  
1876.

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LONDON:

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Correspondence respecting the Imposition of Duty by the United States' Authorities on Tin Cans containing Fish from Canada.

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No. 1.

*Mr. Herbert to Lord Tenterden.—(Received April 28.)*

Sir,

*Downing Street, April 27, 1875.*

WITH reference to the question asked by Sir A. Monck in the House of Commons on the 9th of April and to Mr. Bourke's reply, I am directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, a copy of a despatch from the Governor-General of Canada, inclosing a Report of a Committee of the Privy Council respecting the collection of duty by the United States' Customs authorities upon tin cans containing fish, being the produce of the Canadian fisheries, which proceeding would appear to be inconsistent with the intention of the XXist Article of the Treaty of Washington, and practically to render its provisions inoperative in respect of an important class of goods.

Lord Carnarvon would be glad to be informed of any communication which may be received from Sir Edward Thornton in reference to this matter, or of any communication which Lord Derby may address to him on the subject, in consequence of this remonstrance from the Canadian Government.

I am, &c.

(Signed) ROBERT G. W. HERBERT.

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Inclosure 1 in No. 1.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord,

*Government House, Ottawa, April 7, 1875.*

I HAVE the honour of submitting, for your Lordship's information, a copy of a Report of a Committee of the Privy Council, and accompanying papers having reference to the collection of duty by the United States' Customs authorities upon tin cans containing fish, being the produce of the Canadian fisheries.

A copy of this Minute of Council has been forwarded to Sir E. Thornton, Her Majesty's Minister at Washington.

I have, &c.

(Signed) DUFFERIN.

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Inclosure 2 in No. 1.

*Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General on the 7th day of April, 1875.*

THE Committee of the Privy Council have had under consideration a Report dated 31st March, 1875, from the Honourable the Minister of Customs, submitting certain papers having reference to the collection of duty by the United States' Customs upon tin cans containing fish, being the produce of the Canadian fisheries.

These papers consist of two letters from Mr. Thomas G. Bourne, of the city of St. John, New Brunswick, dated respectively 7th January and 18th February, 1875, stating that, having consigned 50 cases of canned lobsters to Philadelphia, accompanied by a United States' Consul's certificate that the fish was the produce of Canadian fisheries, the Collector of that port refused to accept entry without payment of duty, which letters are accompanied by an affidavit of Charles Buckard, Master of the schooner "Lizzie Dakers," in which vessel the fish was conveyed to Philadelphia, confirmatory of Mr. Bourne's statements.

In addition to the above the Minister also submits two telegrams from the Collector of Customs of Philadelphia, and one from the Collector of the Port of Boston, dated 13th and 15th March ultimo, to the Commissioner of Customs, from which it will be seen that, while they disclaim the collection of duty on the fish, they have charged a very onerous duty upon the cans in which it is contained, viz.,  $1\frac{1}{2}$  cents each upon quart cans, and  $1\frac{1}{2}$  cents for each additional quart.

In connection with these papers the Minister further invites the attention of your Excellency in Council to the XX1st Article of the Treaty of Washington, which is as follows:—

"It is agreed that for the term of years mentioned in Article XXXIII of this Treaty fish-oil and fish of all kinds (except fish of the inland lakes and of the rivers falling in to them, and except fish preserved in oil), being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward Island, shall be admitted into each country respectively free of duty,"

The Minister submits that the language of this Article is very explicit, and that any measure which imposes a duty upon ordinary and usual packages which it is the custom of parties engaged in the trade to use, for the preservation and transportation of the fish, is, in effect, the imposition of a duty upon the fish itself, and cannot be regarded otherwise than as a violation of the Treaty.

That the cans also upon which this duty is imposed are of no value whatever after the contents are removed, and are only used because of the perishable nature of the commodity, and are essential to its preservation in a fresh condition.

The Minister further represents that all similar canned fish, the produce of the fisheries of the United States, is invariably admitted to entry in all ports of Canada free of duty upon both cans and their contents, that being in accordance with the letter and spirit of the Treaty; and he, therefore, recommends that the question be submitted to Her Majesty's Ambassador to the United States for such action as may be necessary to secure a strict observance of the Treaty obligations referred to.

The Committee fully concur in the views and recommendation submitted in the said Report, and advise that a copy of this Minute, and of the papers therein referred to, to be transmitted by your Excellency to Sir Edward Thornton.

Certified,

(Signed) W. A. HIMSWORTH,  
Clerk Privy Council, Canada.

### Inclosure 3 in No. 1.

*Mr. Bourne to Mr. Mackenzie.*

(Extract.) *St. John, N.B., January 7, 1875.*

I VENTURE to trouble you with a few facts which may be of interest at the present time.

In October last I had a vessel proceeding to Philadelphia, and relying on the clauses of the Washington Treaty making fish of all kinds free between the two countries, I shipped fifty cases of preserved lobsters.

They were regularly entered on the ship's manifest, and accompanied by a proper certificate signed by the American Consul here, who assured me that there was no duty. On arrival at Philadelphia they were refused entry unless 35 per cent. duty was paid. The Captain appealed to the Collector personally, but could get no other answer, so they were brought back with the loss of freight and insurance both ways, besides loss of time, &c. This appears to me to be very one-sided reciprocity, for it is within my own personal knowledge that numbers of American houses catch and can or preserve lobsters all along our coasts and supply the upper



provinces of the Dominion with them free of duty, while ours are charged 35 per cent. in their markets.

I wish to observe that mine is not an isolated case, and that I am fully prepared to prove my statements.

On referring to the Dominion Tariff I find "fish preserved not in oil free."

You will, I trust, excuse me troubling you with this trifling matter, in which, however, many are interested besides myself.

Inclosure 4 in No. 1.

*Mr. Bourne to Mr. Johnson.*

Sir,

*St. John, N.B., February 18, 1875.*

I HAVE the honour to acknowledge the receipt of your letter of the 15th ultimo, and regret that I have been unable to make an earlier reply.

I herewith inclose the sworn statement of the captain of the vessel, and also of the Consul's certificate that the goods have been actually relanded at St. John. The certificate you will be good enough to return to me, or forward it to the Customs authorities at Philadelphia, so as to release my Agent from liability.

My direct loss I estimate as follows:—

|                                                     |    |    |    |    |    | D. c. |
|-----------------------------------------------------|----|----|----|----|----|-------|
| Freight on 50 cans, Philadelphia and back, 50 cents | .. | .. | .. | .. | .. | 25 00 |
| Insurance (both ways)                               | .. | .. | .. | .. | .. | 14 50 |
| Consul's certificate, outwards                      | .. | .. | .. | .. | .. | 2 50  |
| " " for discharge of bond                           | .. | .. | .. | .. | .. | 5 00  |
| Cartage and wharfage                                | .. | .. | .. | .. | .. | 5 00  |
| Total                                               | .. | .. | .. | .. | .. | 52 00 |

This is actual money loss here without any allowance for loss of time on the goods, or expenses at Philadelphia.

I beg leave to thank you for your prompt attention to the subject, and to express the hope that I may at least be the means of placing matters on a more satisfactory basis than heretofore.

I am, &c.

(Signed) THOS. G. BOURNE.

Inclosure 5 in No. 1.

*Affidavit.*

I, CHARLES BUCKARD, Master of the British schooner "Lizzie Dakers," of St. John, New Brunswick, of which vessel, at the time herein mentioned, Thomas G. Bourne, of St. John, New Brunswick, was the managing owner, do hereby solemnly swear and declare, that the said schooner being on or about the 16th of October last past under charter to proceed to Philadelphia, in the United States of America, I took on board fifty cases of preserved lobsters in cans, for sale at that port, on account of the said Thomas G. Bourne. That on arrival at Philadelphia I requested entry of the said goods under the terms of the Washington Treaty, as being free of duty. That they were refused entry on those terms, and that on personal application to the Collector of the said port (accompanied by the consignee of the vessel), I was told that they could only be entered subject to a duty of 35 per cent. *ad valorem*. That the goods in question were accompanied by a proper certificate, obtained from the United States' Consul at St. John, and that in consequence of the above decision the said goods were brought back to St. John, under bonds given by the agent of the vessel, rendering them liable until such bonds had been cancelled by the sworn testimony of the master and mate of the said vessel, made before the United States' Consul at St. John, New Brunswick. That the said goods had been actually relanded at St. John, the port from which they were originally shipped, and that the said goods were actually brought back and relanded at St. John, New Brunswick, between the 29th and 31st days of December, 1874, according to the terms of the certificate herewith enclosed.

(Signed) CHAS. BUCKARD

Before me,  
(Signed) P. GLEESON, J.P.

## Inclosure 6 in No. 1.

*Mr. Simmons to Mr. Johnston.*

(Telegraphic.)

*Boston, March 15, 1875.*

LOBSTERS in cans, produce of Canadian fisheries, free; cans dutiable.

## Inclosure 7 in No. 1.

*Mr. Cornby to Mr. Johnston.*

(Telegraphic.)

*Philadelphia, March 13, 1875.*

ALL fish oil, and fish of all kinds, except fish of the inland lakes, and of the rivers falling into them, and except fish preserved in oil, being the produce of the fisheries of the Dominion of Canada, admitted free of duty.

## Inclosure 8 in No. 1.

*Mr. Cornby to Mr. Johnston.*

(Telegraphic.)

*Philadelphia, March 15, 1875.*

LOBSTERS and oysters free, cans or packages made of tin or other material, not exceeding one quart, duty  $1\frac{1}{2}$  c. each, exceeding one quart, additional duty  $1\frac{1}{2}$  c. for each additional quart.

## No. 2.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, May 1, 1875.*

I TRANSMIT to you, for your information, the accompanying copy of a letter which has been received from the Colonial Office,\* inclosing copy of a despatch from the Governor-General of Canada, together with a Report of his Privy Council and other documents relative to the imposition by the United States' Customs authorities of duty upon tin cans containing fish, the produce of the Canadian fisheries, and I have to request you to furnish me with any observations which you may have to make upon this matter.

The inclosures to the Colonial Office letter are not sent herewith, as they would appear to have been forwarded to you direct from Canada.

I am, &c.  
(Signed) DERBY.

## No. 3.

*Mr. Lister to Mr. Herbert.*

Sir,

*Foreign Office, May 1, 1875.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 27th ultimo, together with its inclosure, relative to the imposition of the United States' Customs authorities of duty upon tin cans containing fish, the produce of the Canadian fisheries, and I am to inform you in reply that no report on the subject has yet been received from Her Majesty's Minister at Washington, but that your letter has been referred to him for observations.

I am, &c.  
(Signed) T. V. LISTER.

## No. 4.

*Sir E. Thornton to the Earl of Derby.—(Received May 2.)*

My Lord,

*Washington, April 19, 1875.*

I HAVE the honour to inclose copy of a despatch which I have received from the Governor-General of Canada, and in which his Excellency forwards me a Report of a Committee of the Privy Council of Canada, relative to the refusal of the Customs



authorities to allow the import, free of duty, of some tin cans containing lobster, the produce of the Dominion of Canada, and to the collection of duties upon tin cans containing fish from Canada.

I also inclose three printed copies of an Act of Congress passed during the last Session of Congress, and approved on the 8th of February last, making certain alterations in the Customs' and internal revenue laws. At the end of the 4th section of this Act is a proviso imposing a duty upon tin cans containing fish admitted free of duty.

I at first thought that the refusal to admit the lobster in tins brought by the "Lizzie Dakers" to Philadelphia was in accordance with this proviso, for I cannot find that there is any such duty as that of 35 per cent. *ad valorem* upon lobster in tins; but as the arrival of the "Lizzie Dakers" was previous to the passing of the inclosed Act, I presume that the Customs authorities chose to consider the tin cans as coming under the head of "manufactures of tin," upon which there is a duty of 35 per cent.

I thought it, however, expedient to address a note to Mr. Cadwalader, Acting Secretary of State in the absence of Mr. Fish, in which I have put it that an attempt was made to levy duty upon the fish, and that this was an infraction of the XXIst Article of the Treaty of May 8, 1871.

I also adverted to the proviso of the Act of February 8, 1875, levying a duty upon tin cans containing fish free of duty, which it appears to me is entirely opposed to the spirit of the Treaty of May 8, 1871, for it is of course impossible to import fish of that sort without the protection of these tin cans, which are themselves, when once broken open, of no use or value whatever.

Your Lordship will observe that the Act imposes the duty upon "cans or packages made of tin or other material," so that if this principle is admitted, there is no reason why such a duty should not be imposed upon tin cans, barrels, cases, or any other package containing fish as would prohibit entirely the importation of fish from Canada, and render the stipulation of the Treaty illusory.

I have the honour to inclose a copy of my note above-mentioned.

I have, &c.

(Signed) EDWD. THORNTON.

#### Inclosure 1 in No. 4.

*The Earl of Dufferin to the Earl of Carnarvon, April 8, 1875.*

[See Inclosure 1 in No. 1.]

#### Inclosure 2 in No. 4.

*Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General on the 7th day of April, 1875; with Annexes.*

[See Inclosure 2 in No. 1.]

#### Inclosure 3 in No. 4.

*Extract from an Act to amend existing Customs and Internal Revenue Laws, and for other purposes.*

Sec. 4. That on and after the date of the passage of this Act, in lieu of the duties imposed by law on the articles in this section enumerated, there shall be levied, collected, and paid on the goods, wares, and merchandize in this section enumerated and provided for, imported from foreign countries, the following duties and rates of duties, that is to say:—

On hops, eight cents per pound.

On chromate and bichromate of potassa, four cents per pound.

On macaroni and vermicelli, and on all similar preparations, two cents per pound.

On nitro-benzole, or oil of mirbane, ten cents per pound.

On tin in plates or sheets and on terne and tagger's tin, one and one-tenth cents per pound.

On anchovies and sardines, packed in oil or otherwise, in tin boxes, fifteen cents per whole box, measuring not more than five inches long, four inches wide, and three and a-half inches deep; seven and one-half cents for each half-box, measuring not more than five inches long, four inches wide, and one and five-eighths inches deep; and four cents for each quarter-box, measuring not more than four inches and three-quarters long, three and one-half inches wide, and one and one-half inches deep; when imported in any other form, sixty per centum *ad valorem*: Provided, that cans or packages made of tin or other material containing fish of any kind admitted free of duty under any existing law or Treaty, not exceeding one quart in contents, shall be subject to a duty of one cent and a-half on each can or package; and when exceeding one quart, shall be subject to an additional duty of one cent and a-half for each additional quart, or fractional part thereof.

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Inclosure 4 in No. 4.

*Sir E. Thornton to Mr. Cadwalader.*

Sir,

*Washington, April 15, 1875.*

I HAVE the honour to invite your attention to the following circumstances which have been communicated to me by the Governor-General of the Dominion of Canada:—

It seems that the British schooner "Lizzie Dakers," of St. John, New Brunswick, owned by Thomas G. Bourne, of St. John, New Brunswick, being, on or about the 16th of October last, under charter to proceed to Philadelphia, took on board fifty cases of preserved lobsters in cans.

On arrival at that port, the master requested entry of these goods under the terms of the Washington Treaty, as being free of duty. He states that they were refused entry, and that, on personal application to the Collector of the Port, he was told that they could only be entered subject to a duty of 35 per cent. *ad valorem*. The goods were accompanied by a proper certificate obtained from the United States' Consul at St. John; but, in consequence of the decision of the Collector, the master took the fifty cases back again, and they were relanded at St. John. The owner of the goods claims that the actual loss on the goods in freight, insurance, and other expenses has amounted to 52 dollars, without any allowance for loss of time on the goods or expenses at Philadelphia.

If the facts are as stated by the master of the "Lizzie Dakers," it seems to me that the refusal to receive the goods in question free of duty was an infraction of the Treaty of May 8, 1871, and of the Act of Congress of March 1, 1873, and that the owner of the goods is entitled to compensation for the loss he has suffered; and I have the honour to ask that inquiries may be instituted upon the subject.

A representation has also been forwarded to me by the Governor-General of Canada, relative to a duty levied upon the tin cans containing lobster and other fresh fish imported into the United States from Canada.

I presume that the imposition of this duty is in accordance with the proviso at the end of the 4th section of the Act of Congress of February 8, 1875, which enacts "that cans or packages made of tin or other material containing fish of any kind admitted free of duty under any existing law or Treaty, not exceeding one quart in contents, shall be liable to a duty of 1½ cent on each can or package." But I must be allowed to observe that this enactment seems to me to be entirely contrary to the spirit of the XXist Article of the Treaty above mentioned, which provides for the free admission of fish of all kinds into each country.

The tin can which contains lobster and other fresh fish is not like other packages or vessels containing duty-free articles, upon which packages or vessels, such as carboys, casks, barrels, &c., duty is levied; for these are, when emptied, saleable and useful articles, whilst the tin cans containing fish are necessary to the preservation of the contents, but, when opened, are necessarily destroyed, and are unsaleable and useless.

I should hesitate to believe that this particular proviso of the Act of Congress of February 8, 1875, was especially directed against the fish preserved in cans, the produce of the Dominion of Canada and of Prince Edward Island, which suffers from this duty; whilst, on the other hand, no duty is levied in Canada upon tin cans containing fish, the produce of the United States.

I venture to hope that the Government of the United States, which, I am convinced, is imbued with a spirit of liberality upon this matter, will acquiesce in



my view, and that measures may at least be taken during the next Session of Congress for a reconsideration of the enactment in question.

I have, &c.  
(Signed) EDWD. THORNTON.

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No. 5.

*Lord Tenterden to Mr. Herbert.*

Sir, *Foreign Office, May 6, 1875.*  
WITH reference to your letter of the 27th ultimo, relative to the levy of duty at Philadelphia on tin cans containing lobsters, the produce of the Canadian fisheries, I am directed by the Earl of Derby to transmit to you a copy of a despatch from Sir E. Thornton on the subject;\* and I am to request you to state to the Earl of Carnarvon that Lord Derby proposes, with his concurrence, to approve the note which Sir E. Thornton has addressed to the Acting Secretary of State, calling the attention of the United States' Government to the matter.

I am, &c.  
(Signed) TENTERDEN.

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No. 6.

*Mr. Herbert to Lord Tenterden.—(Received May 11.)*

Sir, *Downing Street, May 10, 1875*  
I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 6th instant, inclosing a despatch from Sir E. Thornton, relative to a duty charged in the United States of America on tin cans containing fish, the levy of which duty in the case of fish, the produce of British North America, appears to be inconsistent with the provisions of the Treaty of Washington.

Lord Carnarvon desires me to state that he concurs in the approval which Lord Derby proposes to convey to Sir E. Thornton of the communication which he has addressed to the United States' Government on this subject.

I am, &c.  
(Signed) ROBERT G. W. HERBERT.

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No. 7.

*The Earl of Derby to Sir E. Thornton.*

Sir, *Foreign Office, May 13, 1875.*  
I HAVE had under my consideration, in communication with Her Majesty's Secretary of State for the Colonies, your despatch of the 19th ultimo, forwarding correspondence respecting the levy of duty by the Customs' authorities at Philadelphia on tin cans containing fish, the produce of the Dominion of Canada, and I have to state to you that the note which you addressed to Mr. Cadwalader on the subject on the 15th ultimo is approved by Her Majesty's Government.

I am, &c.  
(Signed) DERBY.

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No. 8.

*Mr. Herbert to Lord Tenterden.—(Received May 29.)*

(Extract.)

*Downing Street, May 28, 1875.*  
WITH reference to my letter of the 27th of April, and to your reply of the 6th instant, I am directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, a copy of a despatch from the Governor-General of

Canada, inclosing a further Report of the Privy Council, urging that a representation may be addressed to the Government of the United States, with a view to the removal of the duty recently imposed by the Government upon tin cans and other packages containing duty-free fish.

Lord Carnarvon would recommend that these papers should be communicated at once to Sir E. Thornton. In the meantime his Lordship proposes to inform the Officer Administering the Government that this matter is receiving the best attention of Her Majesty's Government, and to refer him to a Secret despatch addressed to him on the 11th instant, in which his Lordship forwarded to him copy of the communication which Sir E. Thornton addressed to Mr. Cadwalader on the 15th of April, of the full purport of which the Canadian Government do not appear to have been aware when writing their Report of the 30th of April, now forwarded.

Inclosure 1 in No. 8.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord,

*Government House, Ottawa, May 1, 1875.*

IN my despatch of the 7th of April I had the honour of forwarding to your Lordship a copy of a Minute of the Privy Council, which has been communicated to Her Majesty's Minister at Washington, remonstrating against the exaction by the United States' Customs authorities of the duty lately imposed upon tin cans containing fish, being the produce of the Canadian Fisheries.

I have now the honour of inclosing a copy of a further Report of Council, which contains an urgent request from my Government that the attention of the United States may be drawn to the subject, and that the Executive may be moved to adopt measures for the removal of the impost complained of.

I have, &c.

(Signed) DUFFERIN.

Inclosure 2 in No. 8.

*Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General on the 30th day of April, 1875.*

THE Committee of Council have had under consideration the despatches from Sir Edward Thornton, British Minister at Washington, to your Excellency, under date the 12th and 16th April, 1875, in answer to a despatch inclosing the minute of the Privy Council, dated 7th April, 1875, remonstrating against the exaction by the United States' Customs authorities of the duty lately imposed upon tin cans, containing fish imported from the Dominion of Canada, which, by the 21st Article of the Treaty of Washington, is to be admitted free of duty. That Article reads as follows:—

"It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, fish oil and fish of all kinds (except fish of the inland lakes, and of the rivers falling into them, and except fish preserved in oil) being the produce of the fisheries of the United States or of the Dominion of Canada, or of Prince Edward Island, shall be admitted into each country respectively free of duty."

The Trade between Canada and the United States in fish, including oysters and lobsters, inclosed in hermetically sealed cans of tin, is large and important; the value of American oysters imported into Canada last year in tin cans, chiefly from Baltimore, was 110,000 dollars, and since the Treaty of Washington no duty has been charged on tin or other packages containing fish from the United States, free under the XXIst Article of the Treaty, and as no complaints have been made to the Canadian authorities, it may fairly be assumed that the American Government considered the language of the XXIst Article sufficiently clear to admit the tin and other packages containing fish free of duty. That interpretation seemed consistent with the spirit of the Treaty, as a large portion of the fish trade could only be carried on successfully in hermetically sealed cans, and if it had been contemplated to exempt fish so prepared it is but reasonable to infer that the restriction would have been stated.



On the 8th February last the Congress of the United States passed an Act, No. 11, amending "Existing Customs and Internal Revenue Laws, and for other purposes," the 4th section of which contains the following provision:—

"That cans or packages made of tin, or other material, containing fish of any kind, admitted free of duty under any existing Law or Treaty, not exceeding one quart in contents, shall be subject to a duty of  $1\frac{1}{2}$  c. on each can or package, and when exceeding one quart shall be subject to an additional duty of  $1\frac{1}{2}$  c. for each additional quart or fractional part thereof."

It seems clear, from the introduction of the word Treaty, that this proviso expressly defeats the construction hitherto placed upon the XXIst Article of the Treaty, the tin cans are necessary for the preservation and transportation of the fish, and on removal of the contents the cans have no value whatever; it is obvious therefore that the imposition of an arbitrary duty on the cans is equivalent to a duty on the fish, and in the opinion of the Committee is a violation of the XXIst Article of the Treaty.

The Committee are disposed to think that the proviso in the Act of Congress referred to must have been inadvertently inserted, and without considering the restriction it would impose on the fair and reasonable interpretation of the Article in the Treaty, as it is impossible to believe that it was intended to violate express Treaty stipulations, and they trust that when the subject is brought under the notice of the United States' Government, the just grounds of complaint on the part of the Dominion Government will be removed.

The Committee, therefore, advise that a copy of this Minute, and also a copy of the Minute approved on the 7th April instant, with the letters and documents therein referred to, be transmitted by your Excellency to the Right Honourable the Secretary of State for the Colonies, with a request that the attention of the Government of the United States may be called to the subject, and that it may be moved to adopt measures for the removal of the duty complained of.

Certified,  
(Signed) W. A. HIMSWORTH,  
Clerk Privy Council, Canada.

Inclosure 3 in No. 8.

*Sir E. Thornton to the Earl of Dufferin.*

My Lord, Washington, April 12, 1875.

I HAVE the honour to acknowledge the receipt of your Excellency's despatch of the 8th instant, forwarding a Report of a Committee of the Privy Council relative to the collection of duty by the United States' Authorities upon tin cans containing fish, being the produce of the Canadian Fisheries.

Although it is not so stated in the declaration of the Master of the "Lizzie Dakers," or in Mr. Bourne's letter of the 18th of February last, I presume that the duty of 35 per cent. *ad valorem* demanded by the Collector at Philadelphia was upon the tin cans, and not upon the lobster which they contained; for 35 per cent. is the duty imposed by the Tariff upon manufactures of tin, whilst I find no such duty upon preserved lobster, the duty on the latter being, as I understand the Tariff, 50 cents. per 100 lbs.

With regard to the duty on the tin cans I must make further inquiries, and shall then probably make a verbal representation to Mr. Fish upon the subject. But, as far as I can as yet learn, the general rule seems to be to levy duties upon the vessels, of whatever sort they may be, which contain the duty-free articles, the difference however being that these vessels can generally be used again, whilst the tin cans, when once opened, can be of no use.

I have, &c.  
(Signed) EDWD. THORNTON.

## No. 9.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, June 7, 1875.*

WITH reference to my despatch of the 13th ultimo, I transmit to you a copy of a letter from the Colonial Office\* forwarding a despatch from the Canadian Government which suggests that a representation should be made to the United States' Government, against the duty recently imposed upon tin cans and other packages containing duty-free fish imported into the United States, and I have to instruct you to take such steps as you may think advisable for obtaining the removal of the duty in question.

I am, &c.  
(Signed) DEBBY.

## No. 10.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, June 7, 1875.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 28th ultimo, forwarding a further communication from the Canadian Government as to the duty recently imposed in the United States upon tin cans containing duty-free fish, and I am to state to you, for the information of the Earl of Carnarvon, that copies of these papers have been sent to Sir E. Thornton, and that he has been instructed to take such steps as he may think advisable for obtaining the removal of the duty in question.

I am, &c.  
(Signed) TENTERDEN.

## No. 11.

*Sir E. Thornton to the Earl of Derby.—(Received July 3.)*

(Extract.)

*Washington, June 21, 1875.*

WITH reference to my despatch of the 19th of April last, I have the honour to inclose copies of a note and of its inclosures which I have at length received from Mr. Cadwalader, Acting Secretary of State, in answer to mine of the 15th of April last, relative to the refusal of the Collector of Customs at Philadelphia to admit free of duty certain tins of lobster coming from Canada, and to the imposition of a duty upon tin cans containing fish, the latter being free of duty by the provisions of the Treaty of May 8, 1871.

Your Lordship will perceive that, in the first instance, the Collector of Customs of Philadelphia excuses himself by supposing that the lobsters in question were preserved in oil, and therefore excepted from free admission by the terms of the Treaty. I must acknowledge that I am surprised that the Master of the "Lizzie Dakers" took back the lobster in question without even entering a protest before Her Majesty's Consul or making any representation to Her Majesty's Minister, in either of which cases the matter would probably have been investigated, and it would have been proved whether the lobster could have been admitted or not under the terms of the Treaty.

With regard to the duty imposed upon tin cans containing fish which itself would be free of duty, Mr. Cadwalader, who has not sent me a copy of the communication from the Secretary of the Treasury, states that the latter thinks that it is not proper for him to express an opinion in reference to this legislation in the absence of a request from Congress so to do. The Secretary of the Treasury adds that, in a case of doubtful construction, he would be slow to construe an Act of Congress so that it might be held to do violence to a Treaty stipulation, but that in this instance the language of the Act is so clear as to admit of no doubt, and that he considers that the assessment of duty on tin cans containing fish imported under the Treaty is required by such Act.

\* No. 8.



I am to-day forwarding copies of this note and of its inclosures to his Excellency the Administrator of the Government of Canada.

I may observe that, since I addressed my note on the 19th of April last to Mr. Fish, the Secretary of the Treasury has issued an order to the effect that barrels containing fish free of duty by Treaty are not subject to the duty imposed by the Act of Congress. Yet I cannot see why barrels should be exempt when tin cans are not so; for the Act imposes duty upon "cans or packages made of tin or other material containing fish of any kind admitted free of duty under any existing law or Treaty, &c."

Inclosure 1 in No. 11.

*Mr. Cadwalader to Sir E. Thornton.*

Sir,

*Department of State, Washington, June 19, 1875.*

REFERRING to your note of the 15th April last, inviting the attention of this Department to the imposition of a duty on an importation of canned lobsters by the "Lizzie Dakers," and also to the imposition of a duty on tin cans containing fish admitted free of duty, I have the honour to inform you that a communication upon the subject has been received from the Secretary of the Treasury, bearing date the 16th June, to whom a copy of your note had been referred.

In reference to the particular information by the "Lizzie Dakers," the Secretary of the Treasury forwards a copy of a letter addressed to the Collector of Customs at Philadelphia, under date of May 3, requesting a report in reference to the case, and of the reply of the Collector of Customs thereto.

A copy of this correspondence is herewith inclosed. You will perceive from the communication of the Collector the grounds on which he deemed the importation in question not entitled to free entry. The Secretary of the Treasury states, in reference thereto, that, as the importation had been warehoused and withdrawn for immediate exportation prior to this report, that his Department has no means of determining with certainty, at the present time, whether the same was or was not entitled to free entry, and that he is unable, with the facts in his possession, to express an opinion as to whether the goods were entitled to free admission.

In regard to the duty on tin cans imposed by the Act of February 8, 1875, the Secretary of the Treasury is of opinion that it is not proper for him to express an opinion in reference to this legislation in the absence of a request from Congress so to do. He adds, that in a case of doubtful construction he would be slow to construe an Act of Congress so that it might be held to do violence to a Treaty stipulation, but that in this instance the language of the Act is so clear as to admit of no doubt, and that he considers that the assessment of duty on tin cans containing fish imported under the Treaty to be required by such Act.

I have, &c.

(Signed) JOHN L. CADWALADER.

Inclosure 2 in No. 11.

*Mr. Hartley to Mr. Cornby.*

Sir,

*Treasury Department, Washington, May 3, 1875.*

I INCLOSE herewith an extract from a letter of the British Minister, addressed to the Department of State, under date of the 15th ultimo, in which it is alleged that you refused free entry of a certain importation of fifty cases of pressed lobster, per schooner "Lizzie Dakers," from St. John, New Brunswick.

Referring to Department's decision of July 10th, 1873 (Synopsis 1622), I will thank you to report, in what respect, if any, the preserved lobsters in question differ from those covered by said decision, stating whether you refused free entry of said merchandize, as alleged, and if so, what ground you had for such action.

I have, &c.

(Signed) J. F. HARTLEY.

## Inclosure 3 in No. 11.

*Mr. Cornby to Mr. Bristow.*Sir, *Custom House, Philadelphia, May 8, 1876.*

I HAVE the honour to acknowledge the receipt of your letter of the 3rd instant, containing copy of an extract from a letter of the British Minister, addressed to the Department of State under date of the 15th ultimo, in which it is alleged that you [I] refused free entry of a certain importation of fifty cases of preserved lobsters, per schooner "Lizzie Dakers," from St. John, New Brunswick, and in reply respectfully beg leave to say that, after investigation, I cannot find that free entry was refused for the fifty cases of lobsters except from the supposed fact that the lobsters being preserved in oil; Revised Statutes, Section 2506: "All fish oil and fish of all kinds (except fish of the inland lakes and rivers falling into them, and except fish preserved in oil), being the produce of the fisheries of the Dominion of Canada or of Prince Edward Island, shall be admitted into the United States free of duty.

I have no doubt that the lobsters were not entitled to free entry under the above section, as it appears they were warehoused and withdrawn for immediate exportation.

I am, &amp;c.

(Signed) S. J. CORNBYP, Collector.

## No. 12.

*Mr. Lister to Mr. Herbert.*Sir, *Foreign Office, July 6, 1875.*

WITH reference to your letter of the 10th of May, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister in Washington,\* in regard to the imposition of a duty upon tin cans containing fish imported from Canada into the United States.

I am, &amp;c.

(Signed) T. V. LISTER.

## No. 13.

*Sir E. Thornton to the Earl of Derby.—(Received September 19.)*

My Lord,

*Washington, September 6, 1875.*

WITH reference to my despatch of the 21st of June last, I have the honour to inclose copies of a despatch, and of its inclosures, from the Administrator of the Government of Canada, transmitting copy of a Report of a Committee of the Privy Council of Canada, suggesting that I should call upon the United States' Government to grant indemnity to the shipper of a quantity of preserved lobster in tins, which arrived at Philadelphia at the end of last year, in the "Lizzie Dakers," and was refused admittance, as the master alleges, except on the payment of duty.

In compliance, however, with the general instructions from your Lordship's Department, I have the honour to submit the case to you, and to ask whether your Lordship deems it expedient that the claim of the shipper of the preserved lobster should be presented to the Government of the United States.

I may be allowed to observe that the Master of the "Lizzie Dakers" does not seem to have obtained from the Collector of Customs a refusal in writing to admit the lobster except on the payment of duty, but to have taken it back to Canada on the verbal refusal of the Collector to admit it free of duty. It seems to me that he would, under the circumstances, have done better to have paid the duties under protest, and afterwards to have claimed their restitution. At any rate, he might have addressed himself either to Her Majesty's Consul at Philadelphia, or to Her Majesty's Minister at Washington, in either of which cases it is more than probable



that the exemption of the lobster from the payment of duty would have been at once allowed. But he took neither of these steps, and does not seem even to have entered a protest at the British Consulate against the act of the Collector of Customs. The master's determination to take the lobster back again without even taking such ordinary steps, or discovering the reasons which led the Collector to refuse its admittance free of duty, seems to have been somewhat precipitate.

I have, &c.

(Signed) EDWD. THORNTON.

Inclosure 1 in No. 13.

*Lieutenant-General Sir W. O'G. Haly to Sir E. Thornton.*

Sir, *Halifax, Nova Scotia, August 30, 1875.*

WITH reference to your despatch of the 21st June, and to previous correspondence on the subject of the refusal of the Collector of Customs at Philadelphia to admit cases of preserved lobster shipped from Canada, unless upon the payment of duty, I have the honour, at the instance of my Government, of inclosing a copy of an approved Minute of Council, covering copy of a letter, and an affidavit in support of the claim of the shipper for indemnity for loss sustained by him in consequence of the action of the Collector of Customs.

I have, &c.

(Signed) W. O'G. HALY.

Inclosure 2 in No. 13.

*Report of a Committee of the Honourable Privy Council, approved by his Excellency the Administrator of the Government in Council, on the 27th August, 1875.*

THE Committee of the Privy Council have had under consideration the Memorandum dated 10th July, 1875, from the Honourable the Minister of Customs, relative to the cases of preserved lobster which the Master of the "Lizzie Dakers" stated were refused admission by the Custom-house at Philadelphia, unless upon the payment of duty.

The Secretary of the Treasury of the United States forwards a copy of a letter addressed to the Collector of Customs, Philadelphia, in which he states that, "after investigation, he cannot find that free entry was refused for the fifty cases of lobsters, except from the supposed fact that the lobsters being preserved in oil," they came within the exceptions in the Treaty and the Acts relating thereto.

On this point the Minister of Customs submits that the facts stated in the accompanying affidavits of Thomas G. Bourne, Esq., the shipper of the lobsters in question, and J. E. Puddington, Esq., a respectable merchant of St. John, New Brunswick, may, in his opinion, be received as satisfactory proof that there was no oil used in their preservation, and further that such a method of preserving lobsters is not known or practised in Canada, and as this is the only ground alleged by the Collector of Customs of Philadelphia for refusing to accept a free entry of the fish, he trusts that the Secretary of the Treasury of the United States will favourably consider the claim of the shipper for indemnity for the loss sustained by him as a consequence of the Collector's custom.

The Committee concurs in the views expressed by the Minister of Customs, and advise that a copy of this Minute and of the affidavits referred to be transmitted to Sir Edward Thornton.

Certified,

(Signed) W. A. HIMSWORTH,  
Clerk, Privy Council.

## Inclosure 3 in No. 13.

*Mr. Bourne to Mr. Johnson.*

Sir,

*St. John, New Brunswick, July 29, 1875.*

I HAVE to acknowledge the receipt of your letter of the 14th instant, and regret that, owing to severe illness, I have not been able to make an earlier reply. I herewith inclose papers such as you request, and think they should be sufficient to satisfy any person desirous of arriving at the truth of the matter. In order, however, to set the matter at rest, I have forwarded you, by to-day's mail, a can of preserved lobsters, taken at random from the very lot that was shipped to Philadelphia by the "Lizzie Dakers."

I am, &amp;c.

(Signed) THOS. G. BOURNE.

## Inclosure 4 in No. 13.

*Affidavit.*

I, THOMAS GEORGE BOURNE, of the City of St. John, New Brunswick, in the Dominion of Canada, do hereby solemnly swear and declare that the fifty cases of preserved lobsters shipped by me on board the schooner "Lizzie Dakers," on the 19th of October last past, and which were refused free entry at the Port of Philadelphia, in the United States, and afterwards returned to St. John, New Brunswick, under bond, were fresh lobsters, put up in the usual way in which fresh meats, fish, and vegetables are put up in cans; that no oil of any kind whatever was used, or could have been used in their preparation, and that, if necessary, I am prepared to furnish sample cans of exactly the same brand of fish, which I would be willing to submit to the judgment of competent persons in proof of the truth of my statement.

(Signed) THOMAS G. BOURNE.

Sworn to before me, this 27th day of July, 1875.

(Signed) P. GLEESON, J.P.

I, J. E. Puddington, of the city of St. John, New Brunswick, merchant, being fully cognizant of the facts of the statement above sworn to, do hereby testify that such statement is, in my opinion, strictly true and worthy of full credit and belief.

(Signed) J. E. PUDDINGTON.

Witness :

(Signed) W. H. MERRETT.

*St. John, New Brunswick, July 27, 1875.*

## No. 14.

*Mr. Lister to Mr. Herbert.*

Sir,

*Foreign Office, September 22, 1875.*

WITH reference to Lord Tenterden's letter of the 6th of July, I am directed by the Earl of Derby to transmit to you a copy of a despatch from Her Majesty's Minister at Washington,\* forwarding a copy of a further communication addressed to him by the Canadian Government, on the subject of the demand made by the Custom-house at Philadelphia for the payment of duty on some preserved lobster, shipped on board the "Lizzie Dakers," and I am to request you in laying this despatch before the Earl of Carnarvon to move his Lordship to inform Lord Derby whether he would wish that Sir E. Thornton should be instructed to apply to the United States' Government for compensation for the owner of the lobsters.

I am, &amp;c.

(Signed) T. V. LISTER.



## No. 15.

*Mr. Meade to Lord Tenterden.—(Received October 4.)*

Sir,

*Downing Street, October 2, 1875.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 22nd instant, inclosing a copy of a despatch from Her Majesty's Minister at Washington, forwarding a copy of a further communication addressed to him by the Canadian Government, on the subject of the demand made at the Custom-house at Philadelphia, for the payment of duty on some lobsters shipped on board the "Lizzie Dakers," and requesting to be informed whether Lord Carnarvon would wish that Sir E. Thornton should be instructed to apply to the United States' Government for compensation of the owners of the lobsters.

Lord Carnarvon desires me in reply to request that you will inform the Earl of Derby that his Lordship thinks that Sir E. Thornton may be instructed to ascertain whether the United States' Government would be prepared to make any compensation to the shipper of these lobsters.

I am, &c.  
(Signed) R. H. MEADE.

## No. 16.

*Mr. Malcolm to Lord Tenterden.—(Received October 7.)*

Sir,

*Downing Street, October 6, 1875.*

WITH reference to your letter of the 22nd September, and to the reply from this Department of the 2nd instant, relating to the refusal of the United States Customs' authorities at Philadelphia to admit free of duty certain lobsters shipped on board the "Lizzie Dakers" by Mr. Bourne, of St. John, New Brunswick, I am directed by the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, a copy of a despatch addressed to the officer administering the Government of Canada by Sir E. Thornton on this subject.

Lord Carnarvon desires me to state that he would be glad to receive a copy of any instruction given to Sir E. Thornton in consequence of the letter from this Department above referred to, in order that the Governor-General of Canada may be apprized of the course proposed to be taken in the matter.

I am, &c.  
(Signed) W. R. MALCOLM.

## Inclosure in No. 16.

*Sir E. Thornton to Lieutenant-General Sir W. O'G. Haly, K.C.B.*

Sir,

*Washington, September 6, 1875.*

I HAVE the honour to acknowledge the receipt of your Excellency's despatch of the 30th ultimo, transmitting a copy of a Report of a Committee of the Privy Council of Canada relative to the preserved lobster which was carried to Philadelphia in the "Lizzie Dakers," and was there refused admittance except on the payment of duty.

I do not, however, feel justified in presenting to the United States' Government a claim for indemnity on this account without being instructed to do so by the Earl of Derby, to whom I have, consequently, referred the matter.

I have, &c.  
(Signed) EDWD. THORNTON.

## No. 17.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, October 11, 1875.*

I HAVE had under my consideration, in communication with Her Majesty's Secretary of State for the Colonies, your despatch of the 6th ultimo, forwarding

a communication from the Canadian Government on the subject of the demand made at the Custom-house at Philadelphia for the payment of duty on some tinned lobsters shipped on board the "Lizzie Dakers," and I have to instruct you to ascertain whether the United States' Government would be prepared to make any compensation to the shipper of the lobsters for the loss sustained by him in consequence of that demand.

I am, &c.  
(Signed) DERBY.

## No. 18.

*Mr. Lister to Mr. Herbert.*

Sir,

*Foreign Office, October 12, 1875.*

WITH reference to your letters of the 2nd and 6th instant, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch addressed by Lord Derby to Her Majesty's Minister at Washington,\* instructing him to ascertain whether the United States' Government would be prepared to make any compensation to the shipper of some lobsters on board the "Lizzie Dakers," on which duty was claimed at Philadelphia.

I am, &c.  
(Signed) T. V. LISTER.

## No. 19.

*Sir E. Thornton to the Earl of Derby.—(Received December 5.)*

My Lord,

*Washington, November 22, 1875.*

IN compliance with the instructions contained in your Lordship's despatch of the 11th ultimo, I addressed a note to Mr. Fish, copy of which I have the honour to inclose, inquiring whether the Government of the United States would not consider it in accordance with justice that the owners of the lobster preserved in tins, which was shipped in the "Lizzie Dakers," and was refused admittance, without payment of duty, by the Custom-house at Philadelphia, should be compensated for their loss.

I now inclose copy of the answer which I have received from Mr. Fish, and which incloses copy of a communication from the Secretary of the Treasury, to the effect that it is out of the power of his Department to grant the relief solicited by the owners of the preserved lobster, and that this can only be afforded by a special Act of Congress.

I have forwarded a copy of Mr. Fish's note, and of its inclosure, to the Governor-General of Canada.

I have, &c.  
(Signed) EDWD. THORNTON.

## Inclosure 1 in No. 19.

*Sir E. Thornton to Mr. Fish.*

Sir,

*Washington, October 30, 1875.*

WITH reference to Mr. Cadwalader's note of the 19th of June last, on the subject of some canned lobster which was brought to Philadelphia by the British vessel "Lizzie Dakers" towards the end of 1874, and was refused admittance free of duty by the Collector of Customs of that port, I have the honour to inclose copy of a despatch which I have received from the Administrator of the Government of Canada, transmitting copies of documents showing that the lobster in question was not preserved in oil.

I transmitted a copy of this despatch to the Earl of Derby, and his Lordship has now instructed me to inquire of you whether the Government of the United States would not consider it fair, and in accordance with justice, that some com-

\* No. 17.



pensation should be made to the shipper of the lobster for the loss he has sustained in consequence of the refusal to admit it free of duty, which rendered it necessary to take the lobster back to the place of shipment.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure 2 in No. 19.

*Mr. Fish to Sir E. Thornton.*

Sir, *Department of State, Washington, November 17, 1875.*  
REFERRING to your note of the 30th ultimo, further in regard to the importation of certain canned lobsters in the British vessel "Lizzie Dakers" at the port of Philadelphia in the year 1874, I have the honour to inclose, for your information, a copy of a letter of the 12th instant upon the subject from the Secretary of the Treasury, to whom a copy of your note was submitted.  
(Signed) HAMILTON FISH.

Inclosure 3 in No. 19.

*Mr. Bristow to Mr. Fish.*

Sir, *Treasury Department, November 12, 1875.*  
I HAVE the honour to acknowledge the receipt of the communication of the Acting Secretary of State, under date of the 2nd instant, transmitting a copy of a note and its accompaniments lately received by you from the British Minister further in regard to the importation of certain canned lobsters in the British vessel "Lizzie Dakers" at the port of Philadelphia in the year 1874.

It appears from the papers before the Department that the Collector of Customs at that port declined to admit said importation to free entry on the ground that the lobsters were presumed to have been preserved in oil, a fact which, if true, would exclude them from the benefit of the provision in the Treaty of Washington, allowing, with certain exceptions, the free entry of fish, the produce of Canadian fisheries.

It further appears that, in consequence of such action of the Collector, the owners of the lobsters returned the same to the Dominion of Canada, under an entry for warehouse and immediate exportation, and, consequently, without any examination by which the fact, whether the same were or were not preserved in oil could be determined.

Evidence is now presented going to show that the lobsters in question were, as a matter of fact, not preserved in oil, and were, therefore, entitled to free entry; and claim is made on behalf of the Canadian owners for damages alleged to have been sustained by reason of the non-admission of said merchandize to free entry, and the supposed compulsory re-exportation thereof under the circumstances stated.

In reply I have to remark that it may be deemed sufficient to state, so far as the action of this Department is concerned, that, under the circumstances of the case, the Secretary of the Treasury has no jurisdiction of said claim: first, because it is for constructive or equitable damages; and, secondly, because, if he could entertain the claim and adjust the amount to be allowed (if any) there is no appropriation out of which he could direct the same to be paid.

It may be proper to add, however, for the information of the claimants, that, as the facts appear before the Department, there was no legal stress or compulsion which prevented them from exercising the right to enter the merchandize, either in bond or for consumption, and therefore to have such examination made as would have determined the precise character of the importation, or would have enabled them to bring the question before the Department on protest and appeal.

It would seem, therefore, that the claimants voluntarily adopted an alternative of their own selection, a course which they may have taken in ignorance of their legal rights, but not of itself affording any grounds for the relief they now seek, and which, if they are entitled thereto, can be afforded only by a special Act of Congress.

I am, &c.  
(Signed) B. H. BRISTOW, *Secretary.*

## No. 20.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, December 10, 1875.*

WITH reference to Mr. Lister's letter of the 12th of October, I am directed by the Earl of Derby to transmit to you, herewith, to be laid before the Earl of Carnarvon, a copy of a despatch from Her Majesty's Minister at Washington,\* reporting that the United States' Government are unable, without a special Act of Congress, to grant compensation to the shipper of the lobsters on board the "Lizzie Dakers."

I am, &amp;c.

(Signed) TENTERDEN.

## No. 21.

*Mr. Meade to Lord Tenterden.—(Received December 20.)*

(Extract.)

*Downing Street, December 18, 1875.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 10th instant, inclosing a copy of a despatch from Sir E. Thornton, giving the result of the representation which he made to the United States' Government respecting the grant of compensation to the shipper of certain tinned lobsters sent from Canada on board the "Lizzie Dakers."

## No. 22.

*Sir E. Thornton to the Earl of Derby.—(Received February 5.)*

(Extract.)

*Washington, January 24, 1876.*

I HAVE the honour to state that I have more than once urged upon Mr. Fish the justice of procuring the repeal of the Tariff of February 8, 1873, as far as it relates to the imposition of duty upon the tins containing fish imported from Canada, on the ground that it was a violation of the XXIst Article of the Treaty of May 8, 1871. Mr. Fish, admitting that the duty in question was opposed to the spirit, if not to the letter, of that Treaty, had promised that he would endeavour to obtain a repeal of the objectionable enactment on the meeting of Congress.

Within the last few days I have reminded him of the matter. He excused himself for not having yet taken any step on the ground that, owing to the multitude of requests for papers by the new House of Representatives, he had been more than usually occupied, but he has assured me that he will take an early opportunity of calling the attention of the Chairman of the Committee of Ways and Means to the subject.

## No. 23.

*Lord Tenterden to Mr. Meade.*

Sir,

*Foreign Office, February 8, 1876.*

WITH reference to your letter of the 18th of December, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, an extract of a despatch from Her Majesty's Minister at Washington,† in regard to the imposition of duty upon the tins containing fish imported into the United States from Canada.

I am, &amp;c.

(Signed) TENTERDEN.



NORTH AMERICA. No. 6 (1876).

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CORRESPONDENCE

RESPECTING THE

NAVIGATION

OF

THE UNITED STATES' CANALS

BY

CANADIAN VESSELS.

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*Presented to both Houses of Parliament by Command of Her Majesty.*  
1876.

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Correspondence respecting the Navigation of the United States'  
Canals by Canadian Vessels.

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No. 1.

*Sir E. Thornton to Earl Granville.—(Received January 27.)*

My Lord,

*Washington, January 15, 1872.*

AT a recent interview with Mr. Fish he reminded me that the President, in his Message to Congress at the opening of the Session on the 4th ultimo, stated that a communication had been addressed to the Governors of the different States interested in the matter, urging upon the Governments of those States respectively the necessary action on their part to carry into effect the object of the Article of the Treaty of 8th May last which contemplates the use of the canals, on either side, connected with the navigation of the lakes and rivers forming the boundary, on terms of equality by the inhabitants of both countries.

Mr. Fish then proceeded to read to me the answer which he had received from the Governor of the State of New York, in the canals belonging to which State the inhabitants of Canada are perhaps more interested than in those of any other. It was to the effect that his Excellency had consulted the legal advisers of the State, and that after examination it did not appear to them that there was any Law of the State which prohibited British subjects from navigating its canals, or vessels wholly or in part owned by them from passing through the canals, without the payment of other or higher dues or imposts than those paid by citizens of the United States or their vessels. Governor Hoffman promised, however, to take an early opportunity of submitting the matter to the State Legislature, with a view to obtain an expression of its opinion on the matter.

I have, &c.

(Signed) EDWD. THORNTON.

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No. 2.

*Viscount Enfield to Mr. Herbert.*

Sir,

*Foreign Office, January 31, 1872.*

I AM directed by Earl Granville to transmit to you, to be laid before the Earl of Kimberley, a copy of a despatch from Sir E. Thornton,\* reporting a conversation he had had with Mr. Fish in regard to the carrying into effect the object of the Article of the Treaty of Washington as to the use by the inhabitants of Canada and the United States of the canals, on either side, on terms of equality.

I am, &c.

(Signed) ENFIELD.

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*Sir E. Thornton to the Earl of Derby.—(Received May 10.)*

My Lord,

*Washington, April 28, 1874.*

DURING the interview which Mr. Brown and I had yesterday with Mr. Fish, the latter alluded to a letter which he had received in 1871 from the Governor of the State of New York relative to the provisions of the XXVIIIth Article of the Treaty of Washington, relating to the navigation of the State canals.

In my despatch to Earl Granville of the 15th January, 1872, I informed his Lordship that Mr. Fish had read to me the above-mentioned letter.

Mr. Fish yesterday expressed his belief that he had sent me a copy of that letter, but, on my replying that he had not done so and expressing a wish to have it, he promised to send it me. In answer to my question whether the Governor had obtained any expression of opinion upon the subject from the State Legislature of New York, he said he did not know, but would make inquiries.

I now have the honour to inclose copies of Mr. Fish's note to me and of the letter of the Governor of New York, dated December 4, 1871, upon the subject of the canals of that State.

I shall also forward copies of these documents to the Governor-General of Canada.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure 1 in No. 3.

*Mr. Fish to Sir E. Thornton.*

Sir,

*Department of State, Washington, April 27, 1874.*

I HAVE the honour to inclose herewith, in compliance with your verbal request, a copy of a letter addressed to the President by the Governor of the State of New York, under date of December 4, 1871, upon the subject of carrying into effect the provisions of the XXVIIIth Article of the Treaty of Washington.

I have, &c.  
(Signed) HAMILTON FISH.

Inclosure 2 in No. 3.

*Mr. Hoffman to President Grant.*

*State of New York Executive Chamber, Albany,  
December 4, 1871.*

Sir,

I RECEIVED this morning your letter of the 29th November, transmitting to me a copy of a Treaty, concluded on the 8th of May last, between the United States and Great Britain, calling my attention to the XXVIIIth Article thereof, whereby the United States engages to urge upon the State Governments to secure to the subjects of Her Britannic Majesty the use of the several State canals connected with the navigation of the lakes or rivers traversed by, or contiguous to the boundary line between the possessions of the High Contracting Parties, on terms of equality with the inhabitants of the United States, and requesting me to bring the provisions of this Article before the Legislature of this State, now about to convene, and to recommend to it such legislation as will secure to the subjects of Her Britannic Majesty in North America the use of the canals of this State on equal terms with our own citizens.

I have caused inquiries to be made of those charged with the administration of the canals of this State, and learn from them that they know of no restrictions now to be found in the laws of this State upon the equal use of the canals by British subjects and American citizens; that there are no restrictions upon foreigners being the owners, in part or in whole, of boats entitled to navigate our canals, nor would a boat owned wholly in Canada be forbidden the use of our canals, or be subjected to other tolls or other regulations than those imposed upon boats owned in our own State.

I shall, nevertheless, with great pleasure call the attention of the Legislature to



the subject, and recommend them to pass such laws as they may find to be necessary to carry into effect at once the agreement made in the XXVIIth Article of the Treaty.

I have, &c.  
(Signed) JOHN W. HOFFMAN.

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No. 4.

*Lord Tenterden to Mr. Herbert.*

Sir, *Foreign Office, May 13, 1874.*  
I AM directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, copy of a despatch on the subject of the navigation of the United States canals by British subjects.\*

I am, &c.  
(Signed) TENTERDEN.

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No. 5.

*Sir E. Thornton to the Earl of Derby.—(Received December 6.)*

My Lord, *Washington, November 23, 1874.*

I HAVE the honour to inclose copies of a despatch and of its inclosure which I have received from the Governor-General of Canada relative to the engagement taken by the United States' Government in the XXVIIth Article of the Treaty of May 8, 1871, to urge the State Governments to throw open the canals therein referred to to British subjects on terms of equality with American citizens.

The Report of the Committee of the Privy Council, transmitted by his Excellency, states that Canadian vessels are still entirely excluded from the use of any and all of the canals within United States' territory, except the Sault Sainte Marie Canal, and recommends that Her Majesty's Minister at Washington be communicated with, with the view of ascertaining whether the Government of the United States will endeavour to procure for those vessels the use of their canals, according to the above-mentioned Article of the Treaty of Washington.

I have hardly thought that I should be justified in charging the United States' Government with having failed to carry out the stipulation contained in that Article, because I know that a communication on the subject was addressed by the President soon after the signature of the Treaty to the Governor of the State of New York, within which the principal canals referred to are situated. I had the honour to inclose a copy of the Governor's answer in my despatch to your Lordship of the 28th of April last.

But I have this day addressed a note to Mr. Fish, copy of which is inclosed, pointing out that United States' vessels are allowed to navigate the Canadian canals, whilst Canadian vessels are entirely excluded from those in the territory of the United States, and suggesting that a further representation upon the subject should be made to the Governor of the State of New York.

I also inclose copy of my answer to Lord Dufferin's despatch.

I have, &c.  
(Signed) EDWD. THORNTON.

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Inclosure 1 in No. 5.

*The Earl of Dufferin to Sir E. Thornton.*

Sir, *Government House, Ottawa, November 18, 1874.*

I HAVE the honour of inclosing, for your consideration, a copy of an approved Order of the Privy Council of the Dominion, in which my Government submit that the engagement entered into by Her Majesty's Government and that of the United States, for the mutual use of the canal system of both countries under the Treaty of Washington, have not been carried into effect by the Government of the United States,

while the Canadian Government has been faithfully acting upon the spirit of the Treaty for a period of over three years.

I am to request that you will be good enough to take such action in the matter as you may deem expedient.

I have, &c.  
(Signed) DUFFERIN.

Inclosure 2 in No. 5.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General, on the 12th November, 1874.*

THE Committee of the Privy Council have had under consideration a Memorandum, dated 11th November, 1874, from the Honourable the Minister of Customs, stating that he has recently learned that the engagements entered into between Her Majesty's Government and that of the United States in reference to the mutual use of the canals of both countries by the vessels of the United States and Canada respectively, as contained in the XXVIIth section of the Treaty of Washington, have not as yet, on the part of the United States, been carried into practical effect; but that while all the Canadian canals have been freely opened to their vessels on payment of the same tolls and charges as are exacted from British or Canadian vessels, the latter are still entirely excluded from the use of any and all of the canals within United States' territory, except the Sault Sainte Marie Canal.

That thus while barges and other vessels, with or without cargo, clearing from ports upon the Hudson River are allowed to pass through the Champlain Canal to the St. Lawrence, and thence from Montreal through the Lachine Canal, and through the canals on the Ottawa to the city of Ottawa, or any other destination, British or Canadian vessels loading at Ottawa, or at any other Canadian port, or even in ballast, are prohibited from passing Whitehall through the Champlain Canal to the Hudson River, in the State of New York; and that the same prohibitory policy obtains generally in reference to the use of the Erie, and other canals connecting navigable waters within the territory of the United States.

That considering that over three years have passed, during which period the Canadian Government has been faithfully acting upon the spirit of the Treaty, permitting the use of their numerous canals in as full and unrestricted a manner as that accorded to their own vessels; and this liberal policy having met with no reciprocity on the part of the Government of the United States, he recommends that the British Minister at Washington be communicated with, with the view of ascertaining whether the Government of the United States will endeavour to procure for British and Canadian vessels the use of their canals, according to the said XXVIIth section of the said Treaty of Washington.

The Committee of Council concur in the foregoing recommendation of the Minister of Customs, and submit the same for your Excellency's approval.

Certified,  
(Signed) W. A. HIMSWORTH,  
Clerk, Privy Council, Canada.

Inclosure 3 in No. 5.

*Sir E. Thornton to Mr. Fish.*

Sir,

*Washington, November 23, 1874.*

SINCE the signature of the Treaty of May 8th, 1871, between the United States and Great Britain, you have on several occasions been good enough to inform me that in conformity with the engagement contained in the XXVIIth Article of that Treaty the President had made a representation to the Governor of the State of New York, urging that the use of the canals in that State should be allowed to the subjects of Her Britannic Majesty on terms of equality with the inhabitants of the United States.

You also communicated to me the nature of his Excellency's reply to the effect that he believed that there were no laws of the State of New York which prohibited the equal use of the canals by British subjects and American citizens, and subsequently in compliance with my wish have had the kindness, on the 27th of April last,



to forward me a copy of the letter which the President had received upon the subject referred to from his Excellency Governor Hoffman.

I had much pleasure in transmitting a copy of his Excellency's letter to Her Majesty's Government, and to the Governor-General of Canada.

But I have just received a despatch from the Earl of Dufferin transmitting copy of a report of a Committee of the Privy Council of the Dominion of the 12th instant, in which it is stated that whilst all the Canadian canals have been freely opened to vessels of the United States on payment of the same tolls and charges as are exacted from British or Canadian vessels, the latter are entirely excluded from the use of any and all of the canals within United States' territory, except the Sault Sainte Marie Canal, and that thus while United States' barges and other vessels, with or without cargo, clearing from ports upon the Hudson River, are allowed to pass through the Chambly Canal to the St. Lawrence, and thence from Montreal through the Lachine Canal, and through the canals on the Ottawa to the city of Ottawa, or any other destination, British or Canadian vessels loading at Ottawa or any other Canadian port, or even in ballast, are prohibited from passing Whitehall through the Champlain Canal to the Hudson River, in the State of New York. The same prohibitory policy, as the report further states, obtains generally in reference to the use of the Erie and other canals connecting navigable waters within the territory of the United States.

As this policy seems to be entirely at variance with the opinion expressed by the Governor of the State of New York in his letter to the President, of December 4th, 1871, and considering that over three years have passed during which the Canadian Government has been faithfully acting upon the spirit of the Treaty, permitting the use of their numerous canals in as full and unrestricted a manner as that accorded to their own vessels, whilst the latter have enjoyed no reciprocity with regard to the canals in the United States, I have the honour to request that inquiries may be made as to the prohibition complained of, which seems so contrary to the spirit of the above-mentioned letter of the Government of the State of New York, and to suggest that further representations may be made with a view to the enjoyment by British and Canadian vessels of the use of the canals in accordance with the XXVIIth Article of the Treaty of Washington.

I have, &c.

(Signed) EDWD. THORNTON.

Inclosure 4 in No. 5.

*Sir E. Thornton to the Earl of Dufferin.*

My Lord,

*Washington, November 23, 1874.*

I HAVE the honour to acknowledge the receipt of your Excellency's despatch of the 18th instant, and of its inclosure, relative to the XXVIIth Article of the Treaty of Washington, by which the United States' Government engaged to urge upon the State Governments to secure to Her Majesty's subjects the use of the canals referred to therein.

There is no doubt that the United States' Government has urged the Government of the State of New York, within which the principal canals are situated, to throw them open to British subjects, and in my despatch to your Excellency, of the 28th of April last, I transmitted a copy of a letter, dated December 4, 1871, from the Governor of the State of New York to the President, in which he stated that those who were charged with the administration of the canals in that State knew of no restrictions upon the equal use of the canals by British subjects and American citizens. Mr. Fish has often referred to this letter, and has expressed his opinion that his Government lost no time in carrying out the engagement contained in the XXVIIth Article of the Treaty.

I do not, therefore, feel justified in saying in an official note that the stipulation of the XXVIIth Article has not been complied with, because I believe that the United States' Government really urged the Government of the State of New York to throw open its canals to British subjects, and wished that it should be done, though its representation seems to have produced no effect.

I am, however, addressing a note to Mr. Fish, stating that the canals of the State of New York have not been opened to British vessels, and have requested that a further representation may be made upon the subject to the Governor of that State.

I should be glad to be informed whether the United States' authorities have prevented Canadian vessels from passing through the St. Clair Flats Canal.

I have, &c.  
(Signed) EDWD. THORNTON.

No. 6.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, December 10, 1874.*

I AM directed by the Earl of Derby to transmit to you a copy of a despatch from Sir E. Thornton,\* inclosing correspondence with the Governor-General of Canada and Mr. Fish on the subject of the exclusion of Canadian subjects from the canals in the State of New York, and I am to request you to state to the Earl of Carnarvon that Lord Derby proposes, with his concurrence, to approve the note which Sir E. Thornton addressed to Mr. Fish on the 23rd ultimo, calling his attention to the matter.

The inclosures marked Nos. 1, 2, and 4 in Sir E. Thornton's despatch are sent in original, to be returned, in case they should not yet have been received at the Colonial Office from Lord Dufferin.

I am, &c.  
(Signed) TENTERDEN.

No. 7.

*Sir E. Thornton to the Earl of Derby.—(Received December 14.)*

My Lord,

*Washington, November 30, 1874.*

WITH reference to my despatch of the 23rd instant, I have the honour to inclose copy of a note which I have received from Mr. Fish in answer to mine, copy of which was inclosed in that despatch, relative to the navigation of certain of the canals of the United States by Canadian vessels. Your Lordship will perceive that Mr. Fish states that a further representation upon the subject has been made to the Governor of the State of New York.

I have forwarded a copy of this note to the Governor-General of Canada.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure in No. 7.

*Mr. Fish to Sir E. Thornton.*

Sir,

*Department of State, Washington, November 24, 1874.*

I HAVE the honour to acknowledge the receipt of your note of the 23rd instant, in reference to the engagement of the United States to urge upon the several State Governments to secure to subjects of Her Britannic Majesty the use of the several State canals connected with the navigation of the lakes; and in which you state that you are in receipt of a despatch from the Earl of Dufferin, transmitting a copy of a Report of a Committee of the Privy Council of the Dominion of Canada, in which it is stated that whilst all the Canadian canals have been opened to vessels of the United States, that British subjects are entirely excluded from the use of any and all canals in the United States, except the Sault Sainte Marie Canal.

I am somewhat surprised at this general statement in the Report of the Committee; and it would, perhaps, be more satisfactory had some special instance of exclusion been reported, that the facts might have been represented. I have, however, transmitted a copy of your despatch to the Governor of the State of New York, and have requested information upon the question.

Although the Report of the Committee of the Privy Council states that all the canals of the United States are so closed, except the Sault Sainte Marie Canal, I beg to inform you that the Resolution of the Legislature of the State of Michigan, of March 23, 1872, opening the Sault Sainte Marie Canal, applied also to any canal connected with



the great lakes, or contiguous to the boundary line between the United States and the Dominion of Canada.

I have, &c.  
(Signed) HAMILTON FISH.

No. 8.

*Mr. Malcolm to Lord Tenterden.*—(Received December 18.)

Sir, *Downing Street, December 16, 1874.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 10th instant, inclosing a copy of a despatch from the British Minister at Washington, with copies of correspondence with the Governor-General of Canada, and the Secretary of State of the United States, on the subject of the exclusion of British subjects from the State canals, referred to in the XXVIIth Article of the Treaty of Washington, 1871.

Lord Carnarvon desires me to inform you that he concurs in the approval of Sir E. Thornton's note to Mr. Fish, which the Earl of Derby proposes to express to him.

The Inclosures Nos. 1, 2, and 4, to Sir E. Thornton's despatch are herewith returned, Nos. 1 and 2 having been received from the Governor-General of Canada in a despatch of which I am to inclose a copy, and a copy of No. 4 having been retained for record in this Department.

I am, &c.  
(Signed) W. R. MALCOLM.

Inclosure in No. 8.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord, *Government House, Ottawa, November 19, 1874.*

I HAVE the honour to transmit herewith, for your Lordship's information, a copy of a despatch which I have addressed to Her Majesty's Minister at Washington, inclosing a copy of an approved Minute of the Privy Council of the Dominion, on the subject of the mutual use of the canals of the United States and Canada, by the shipping of both countries under the Treaty of Washington.

I have, &c.  
(Signed) DUFFERIN.

No. 9.

*Lord Tenterden to Mr. Herbert.*

Sir, *Foreign Office, December 18, 1874.*

WITH reference to my letter of the 10th instant, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a further despatch from Sir E. Thornton, respecting the non-admission of Canadian vessels to the free use of certain canals in the United States.\*

I am, &c.  
(Signed) TENTERDEN.

No. 10.

*Sir E. Thornton to the Earl of Derby.*—(Received December 27.)

My Lord, *Washington, December 14, 1874.*

WITH reference to my despatch of the 30th ultimo, I have the honour to transmit herewith copies of a note which I have received from Mr. Fish, and of its inclosures, relating to the navigation of the canals in the State of New York by British and Canadian vessels.

Your Lordship will perceive that the Governor of that State, to whom the matter was referred, asserts positively that British and Canadian vessels are not prohibited from navigating the canals on the same terms as American vessels; and the Auditor of the Canal Department declares that he is not aware of any instance in which a Canadian vessel has been prevented from entering the canals.

I have forwarded copies of Mr. Fish's note, and of its inclosures, to the Governor-General of Canada.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure 1 in No. 10.

*Mr. Fish to Sir E. Thornton.*

Sir,

*Department of State, Washington, December 8, 1874.*

IN your note of the 23rd of November last, you informed me that you had received a despatch from the Earl of Dufferin, transmitting a copy of a Report of a Committee of the Privy Council of the Dominion of Canada, in which it is stated that, whilst all the Canadian canals have been opened to vessels of the United States, Canadian vessels are entirely excluded from all the canals of the United States, and particular reference was made to the canals of New York. A copy of your note was transmitted to the Governor of the State of New York, and his attention called to the complaint.

I herewith inclose to you a copy of the reply of the Governor of New York, and of the reports and correspondence which accompanied it.

I have, &c.  
(Signed) HAMILTON FISH.

Inclosure 2 in No. 10.

*State of New York Executive Chamber, Albany,  
December 4, 1874.*

Sir,

ON the receipt of your communication of the 24th ultimo, I referred it, with the accompanying documents, to the Auditor of the Canal Department for a report. I inclose a copy of his letter to me, a copy of a letter from him to the Canal Collector at Whitehall, and the reply (original) of the latter, also a copy of a telegraphic despatch of the Auditor to the Collector, and an original telegraphic despatch from the latter in reply. It appears by these papers that British steamships are allowed to navigate our canals on terms of equality with citizens of the United States, and that the Canadian Authorities have been misinformed in regard to the exclusion of British or Canadian vessels from the Champlain Canal at Whitehall.

In his annual message in January, 1872, Governor Hoffman called the attention of the Legislature to the subject in pursuance of the request of the President of the United States, and submitted the XXVIIth Article of the Treaty of the 8th May, 1871, between the United States and Great Britain, recommending the prompt passage of any laws which might be necessary for the fulfilment of the agreement on the part of the Federal Government. No laws were passed, for the reason that there were no restrictions to be removed.

I have, &c.  
(Signed) JOHN A. DIX.

Hon. Hamilton Fish, Secretary of State.

*Telegram, dated Albany, November 30, 1874.*

Collector Canal Tolls, Whitehall,

Have British or Canadian boats, loading at any Canadian port or in ballast, ever been prohibited by you from passing Whitehall through the Champlain Canal to the Hudson River?

(Signed) FRANCIS S. THAYER, Auditor.



*Telegram, dated Whitehall, November 30, 1874.—(Received at Albany, November 30.)*

To Francis S. Thayer, Auditor,  
No, Sir. J. W. Ingall, 1st Clerk, Collector absent.

*State of New York, Canal Department, Albany,  
November 30, 1874.*

My dear Sir,

I am in receipt, through you, of communications from the Department of State at Washington referring our State Government to alleged violations of Article XXVII of the Treaty of Washington.

The laws of the State and canal regulations give to American citizens and British subjects equal rights and privileges in navigating all our canals, and this Department has not, to my knowledge, before been advised of any violation of said Article. The charges made are general, and for this reason difficult of investigation; hence I beg leave to suggest that the Canadian Government be respectfully asked to cite some particular case of grievance, giving date, name of boat, master, &c.; and should the matter again be referred to this Department, I assure your Excellency that it will receive prompt and faithful attention.

With, &c.

(Signed) FRANCIS S. THAYER,  
*Auditor of the Canal Department.*

To His Excellency John A. Dix, Governor,  
&c. &c. &c.

*State of New York, Canal Department, Albany,  
November 30, 1874.*

Dear Sir,

It is alleged by Authorities of Canada that, since the spring of 1871, the citizens of the Dominion have been denied the right to navigate the Champlain Canal with their boats. There never has been a statute or regulation of this State which would exclude the citizens of Canada, or any other State or Government, from the use of our canals upon equal terms with our own citizens, and no specific complaint has been made to this Department by any citizens of Canada that they have been denied the use of our canals. But the Government of Canada complain to our Government at Washington that boats owned and loaded in Canada, upon arrival at Whitehall, and desiring to proceed through the Champlain Canal, have been refused clearance. Has any such case occurred during your term of office, and if so under what authority were such boats excluded? Washington J. Smith and Samuel L. Dwight were collectors in 1871, 1872, and 1873. I wish you would consult with them and ascertain whether any Canada boats were denied clearances during their terms, and if so upon what grounds and by what authority. Please reply promptly and fully.

Yours truly,

(Signed) FRANCIS S. THAYER, *Auditor.*

W. A. Wilkins, Esq., Canal Collector,  
Whitehall, New York.

Dear Sir,

*Whitehall, New York, December 1, 1874.*

In reply to yours of November 30th, I would say that, during my term of office, no Canadian boat has made application for a clearance. Mr. Dwight, my predecessor, informs me that no boat ever applied for a clearance during his term hailing from Canada. W. J. Smith, who preceded Mr. Dwight, is at St. Louis, but his head clerk has no recollection of any Canada boat ever making application for a clearance. Had any applied we should have granted them a clearance if they had conformed with the law.

Yours, &c.

(Signed) W. A. WILKINS, *Collector.*

Hon. Francis S. Thayer.

No. 11.

*Mr. Bourke to Mr. Herbert.*

Sir,

*Foreign Office, January 5, 1875.*

WITH reference to Lord Tenterden's letter of the 18th ultimo, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, a copy of a despatch from Sir E. Thornton,\* inclosing correspondence, from which it appears that the United States' authorities assert that Canadian vessels have not been excluded from the use of the canals in the United States.

I am, &amp;c.

(Signed)

ROBERT BOURKE.

No. 12.

*Mr. Malcolm to Mr. Bourke.—(Received January 29.)*

Sir,

*Downing Street, January 28, 1875.*

IN reply to your letter of the 5th instant, I am directed by the Earl of Carnarvon to transmit to you, for the information of the Earl of Derby, a copy of a despatch which has been addressed to the Governor-General of Canada with regard to the denial by the United States' authorities of the statement of the Canadian Government that Canadian vessels are excluded from the canals in the United States.

I am, &amp;c.

(Signed)

W. R. MALCOLM.

Inclosure in No. 12.

*The Earl of Carnarvon to the Earl of Dufferin.*

My Lord,

*Downing Street, January 12, 1875.*

I HAVE the honour to inform you, with reference to your despatch of the 19th of November, that I have received, through the Foreign Office, copies of the two notes which the United States' Secretary of State has addressed to the British Minister at Washington, a reply to the representation made by your Government on the subject of the exclusion of British subjects from the State canals referred to in the XXVIIth Article of the Treaty of Washington.

From the latter of these notes, copies of which appear to have been communicated to you by Sir E. Thornton, I learn that the Governor of the State of New York asserts positively that British and Canadian vessels are not prohibited from navigating the canals on the same terms as American vessels; and that the Auditor of the Canal Department declares that he is not aware of any instance in which a Canadian vessel has been prevented from entering the canals.

I should be glad if your Lordship would furnish me with some information as to the grounds on which your Government founded their representation, and intimate to me whether they continue to be of opinion that there was cause for it.

I have, &amp;c.

(Signed)

CARNARVON.

No. 13.

*Mr. Malcolm to Lord Tenterden.—(Received March 12.)*

Sir,

*Downing Street, March 11, 1875.*

WITH reference to my letter of the 28th of January, I am directed by the Earl of Carnarvon to transmit to you, for the information of the Earl of Derby, a copy of a despatch from the Governor-General of Canada, inclosing a Minute of the Canadian Privy Council, stating the grounds on which the representation that British subjects were excluded from the canals in the United States was founded.

I am, &amp;c.

(Signed)

W. R. MALCOLM.



## Inclosure 1 in No. 13.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord, Government House, Ottawa, February 19, 1875.

THE Privy Council of the Dominion have had under consideration your Lordship's despatch of the 12th ultimo, having reference to the representations made by my Government to Her Majesty's Minister at Washington on the subject of the exclusion of British subjects from the State canals referred to in the Treaty of Washington, and I have now the honour of submitting a Minute of Council, which states the grounds on which the Canadian Government founded the representations alluded to.

I have, &amp;c.

(Signed) DUFFERIN.

## Inclosure 2 in No. 13.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council, on the 18th February, 1875.*

THE Committee have had under consideration the despatch dated 12th January, 1875, from the Right Honourable Her Majesty's Secretary of State for the Colonies, stating that he has received, through the Foreign Office, copies of the two notes which the United States' Secretary of State has addressed to the British Minister at Washington in reply to the representation made by the Canadian Government on the subject of the exclusion of British subjects from the State canals, referred to in the 27th Article of the Treaty of Washington, and that from the latter of these notes he learns that the Governor of the State of New York asserts positively that British and Canadian vessels are not prohibited from navigating the canals on the same terms as American vessels, and that the Auditor of the Canal Department declares that he is not aware of any instance in which a Canadian vessel has been prevented from entering the canals.

Her Majesty's Minister adds that he should be glad if your Excellency would furnish him with some information as to the grounds on which your Government founded their representation, and intimate to him whether they continue to be of opinion that there was cause for it.

The Honourable the Minister of Marine and Fisheries, to whom this despatch has been referred, reports that the grounds on which the Canadian Government founded the representation alluded to, were statements made by two of its officers, viz., the Collector of Customs at St. Johns, Province of Quebec, and the Collector of Customs at Fort Erie, Ontario, near Buffalo, United States, both officers residing at ports on the frontier, and being intimately acquainted with the canal trade between Canada and State of New York, to the effect that Canadian vessels were not allowed to carry cargoes from Canada through the canals of that State, and that in this statement they were supported by some of the principal Canadian forwarders and owners of canal boats, who all agreed that Canadian canal boats were practically prohibited from navigating the canals of the State of New York on the same terms as American canal boats; that on making further inquiry, however, as to whether any particular case could be cited in which the owner, master or agent of a Canadian canal boat had applied for permission to carry cargo through the canals of New York, and had been refused such permission, he cannot ascertain that any such case has occurred since 1871, the date of the Treaty, although cases have been reported to him where Canadian canal boats with cargoes from Canada to the United States were refused permission to navigate these canals, and were detained at Whitehall, State of New York, by the canal authorities, although built expressly for that trade.

That he has also been informed by some Canadian canal boat drovers and forwarders that the probable reason why no case can be cited of Canadian vessels having been refused permission since 1871 to navigate these canals, is, that the persons engaged in this trade on both sides of the line were so convinced that no change had taken place in the policy of the authorities of the State of New York in this respect, since the seizure of the Canal boats alluded to some years previous to 1871, that they made no attempt to test the question since 1871, as the canal boats usually employed by Canadian forwarders are too large to navigate the New York canals, and they could

not afford to build canal boats specially adapted for such canals until they were assured that they would be allowed to navigate them.

That it appears also that in 1871, when the Governor of the State of New York was urged by the United States' Government to take the necessary action to carry into effect the object of the Article of the Treaty on this subject, he informed the United States' Secretary of State that he had consulted the legal advisers of the State, who did not appear to think there was any law of that State which prohibited British subjects from navigating its canals on terms of equality with citizens of the United States, but that he would, with great pleasure, call the attention of the Legislature to the subject, and recommend them to pass such laws as they may find to be necessary to carry into effect at once the agreement made in the XXVIIth Article of the Treaty; and that, as he, the Minister of Marine and Fisheries, has never been able to learn that any such laws were passed by the Legislature of that State, it is probable that this has also tended to prevent Canadian canal boat owners from building vessels suitable for these canals, and testing the question as to whether they would be permitted to navigate them.

That, as the Governor of the State of New York asserts positively that Canadian vessels are not prohibited from navigating these canals on terms of equality with American vessels, he, the Minister, recommends that Her Majesty's Secretary of State for the Colonies be informed that the Canadian Government no longer continues to be of opinion that Canadian vessels are excluded from the canals of the State of New York, and will take the necessary steps to promulgate officially this important information, in order that Canadian canal boat owners and forwarders may be enabled to take advantage of the privilege referred to.

The Committee concur in the foregoing recommendation, and submit the same for your Excellency's approval.

Certified,  
(Signed) W. A. HIMSWORTH,  
Clerk, Privy Council, Canada.

No. 14.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, March 13, 1875.*

I REFERRED to Her Majesty's Secretary of State for the Colonies your despatch of the 14th of December, relative to the supposed exclusion of British subjects from the United States' canals, and I now transmit to you herewith, for your information, a copy of a letter, with its inclosures, which has been received in reply.\*

I am, &c.  
(Signed) DERBY.

No. 15.

*Sir E. Thornton to the Earl of Derby.—(Received September 19.)*

My Lord,

*Washington, September 6, 1875.*

I HAVE the honour to inclose copy of a despatch which I have received from the Administrator of the Government of Canada, from which your Lordship will perceive that the United States' Government virtually refuses to allow vessels carrying the British flag to navigate the canals of this country, by so interpreting a law as to make it impossible for British vessels to carry goods in bond through those canals. If the proper interpretation has been given to this law, it is opposed to the provisions of the XXVIIth Article of the Treaty of Washington; and as the Treaty is posterior to the law, the provisions of the former ought to overrule the enactments of the law.

I have, therefore, addressed a note to the Acting Secretary of State, copy of which is inclosed, embodying the contents of the Report of the Committee of the Privy Council of Canada, a copy of which is inclosed in Sir William Haly's despatch.

I have, &c.  
(Signed) EDWD. THORNTON.



## Inclosure 1 in No. 15.

*Sir W. Haly to Sir E. Thornton.*

Sir, *Halifax, Nova Scotia, August 30, 1875.*  
 I HAVE the honour to inclose herewith a copy of a Report of my Privy Council, which has received my approval, relative to the imposition upon Canadian vessels of certain restrictions in the use of the Champlain Canal.

I shall feel much obliged if, in accordance with the wishes of my Privy Council, you will make this matter the subject of such representations to the Government of the United States as you may deem expedient.

I have, &c.  
 (Signed) W. O. G. HALY.

## Inclosure 2 in No. 15.

*Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Administrator of the Government on the 27th August, 1875.*

THE Committee of the Privy Council have had under consideration the Report hereunto annexed from the Honourable the Minister of Customs, having reference to certain restrictions placed upon the use of the Champlain Canal by Canadian vessels, and they respectfully submit their concurrence in the said Report, and advise that a copy thereof be transmitted to Her Majesty's Minister at Washington, with a view to the matter complained of being represented to the Government of the United States.

Certified,  
 (Signed) W. A. HIMSWORTH,  
*Clerk Privy Council, Canada.*

The undersigned Minister of Customs has the honour to submit for the consideration of his Excellency the Administrator of the Government in Council the following information respecting certain restrictions placed upon the use of the Champlain Canal by Canadian vessels, and to request that it be made the subject of the communication to Her Majesty's Minister at Washington.

From the result of former correspondence upon a similar subject it was ascertained that an Act of the Legislature of the State of New York secured the mutual use of the canals of Canada and the United States to the vessels of each country, respectively, on equal terms, as per Article XXVII of the Treaty of Washington; but, from documents herewith submitted, it appears that there are still certain difficulties placed in the way of Canadian vessels availing themselves of the right to navigate the Champlain Canal, which the people of this Dominion feel was secured to them by said Treaty.

These documents consist, 1st, of a letter from J. W. McRae, Esq., President of the Ottawa and Rideau Forwarding Company, of the 28th of May, 1875, addressed to the Minister of Marine and Fisheries, in which he complains that "lumber cannot be bonded in Canadian vessels going through the United States' canals;" 2nd, a letter from J. Parmeter, Esq., Collector of Customs, Plattsburgh, New York, dated 28th June, 1875, confirmatory of Mr. McRae's assertion, and giving as a reason the provisions of sec. 2,771 Revised Statutes of the United States, which reads as follows:—"Vessels which are not vessels of the United States shall be admitted to unlade only at ports of entry established by law, and no such vessel shall be admitted to make entry in any other district than in the one in which she shall be admitted to unlade." The third is the affidavit of one Orrin Judson Belden, of Fort Ann, Washington County, New York, dated 14th August, 1875, detailing the particulars of a case in which he was refused by the Collector of the United States' Customs at Rouse's Point, during the present summer, to load a cargo of lumber which he had shipped in the barge "H. F. Burrill," at the Port of Brockville, Canada, for the Port of New York, United States, on the ground that she was a British bottom, and therefore not entitled to the privilege.

The principal question for consideration is whether the law quoted by the Collector of Plattsburgh will properly bear the interpretation which he alleges is given to it by the Treasury Department of the United States, which is, in effect, that

a British vessel cannot take a cargo in bond through a canal belonging to the United States to a port in another Customs' district.

That interpretation being based upon the following words: "and no such vessel shall be admitted to make entry in any other district than the one in which she shall be admitted to unlade," it is submitted that the mere act of the master of the vessel reporting and giving bond at an intermediate port to secure the ultimate payment of duty upon, or properly accounting for, his cargo at his port of destination (when the said cargo must necessarily be subjected to full examination as well as entry) cannot be the description of entry to which the terms of the Act apply, but is only adopted as a means of preventing any violation of the Customs' laws *en route*. It must be remembered that a vessel bound from a Canadian port to the Port of New York must of necessity pass through the Champlain Canal to complete her voyage, and the entry proper of such vessel and cargo should take place at the termination of such voyage; any forms essential for the security of the revenue at intervening ports cannot be properly termed entries in the sense of the law.

The principal value of the free navigation of the Champlain Canal to Canadian vessels consists in the right to carry cargoes by that route to the Port of New York; and if the Act quoted is construed as stated in Mr. Parmerter's letter, it renders the provisions of the Washington Treaty, so far as the navigation of that canal is concerned, practically useless to Canada.

With reference to the affidavit of Captain Belden it will be observed that he claims not only to be a citizen of the United States, but that his vessel also is in fact an American bottom, as, although she virtually changed hands in Canadian waters, her certificate of American registry was never surrendered, nor was she ever registered in Canada. The point, however, of interest in the present question is that she was refused the privilege of taking cargo through the canal in bond, on the sole ground of her being a British vessel, and is here presented as corroborative of the fact that the prohibition is enforced by the United States' Customs Office.

The undersigned Minister of Customs recommends that his Excellency will make this matter the subject of a despatch to Her Britannic Majesty's Minister at Washington, with a view to his calling the attention of the United States' Government thereto, with a hope that an order may issue which will have the effect to remove the restrictions complained of.

(Signed) ISAAC BURPEE.

*Customs Department, Ottawa, October 18, 1875.*

### Inclosure 3 in No. 15.

*Ottawa and Rideau Forwarding Company,  
Ottawa, Ontario, May 28, 1875.*

Sir,

WE are notified by the United States' Customs officials at Rouse's Point, New York, that lumber cannot be bonded in Canadian vessels going through United States' canals. As this will be a serious drawback to Canadian forwarders, I would most respectfully submit it for your consideration. As to its legality, I cannot understand how they can have such a law, while their vessels are allowed the free use of our dominion canals on the same footing as Canadian vessels.

Yours, &c.

(Signed) J. McRAE.

To the Hon. Minister of Marine and Fisheries,  
&c. &c. &c.

*Mr. Parmerter to Captain L. Jones, Montreal.*

*Custom-House, Plattsburgh, New York,  
Collector's Office, June 28, 1875.*

Sir,

I have the honour to acknowledge the receipt of your letter of the 1st instant, wherein you ask for the following information, viz.:—Whether Canada barges will be allowed to pass from Rouse's Point to New York with foreign merchandize in bond. In reply, I beg to inform you that the United States' laws, as construed by the Treasury Department, prohibit the trade in question, so far as British vessels are concerned. Section 2771 Revised Statutes United States reads as follows:—"Vessels



which are not vessels of the United States shall be admitted to unlade only at ports of entry established by law, and no such vessel shall be admitted to make entry in any other district than in the one in which she shall be admitted to unlade."

Respectfully, &c.  
(Signed) J. PARMERTER,  
Collector of Customs.

County of Carleton.

I, Orrin Judson Belden, of the town of Fort Ann, Washington County, in the State of New York, boat captain, make oath and say,—

1. That barge "H. F. Berrill," of Hordford, New York, was wrecked one or two years ago in the harbour of Montreal, and taken by the parties who damaged her, they being Canadians (the vessel had the American register, which appears to have been lost at the time of damaging); the said barge was never registered as a British vessel; after being repaired, was sold to Davil Rice, of Fort Ann aforesaid, lumber merchant, who again sold her in the spring of this year to me the said Belden.

2. I took with her the said vessel a load of coal from the city of Roundout, in the said State of New York, to the city of Montreal, passing through Hudson River, Champlain Canal, Champlain Lake, Resheben and St. Lawrence Rivers, and from thence to Brockville, in the province of Ontario, light for a load of lumber, which said lumber was consigned to New York city, which said lumber I expected to bond from Rouse's Point, in the State of New York, to the said port, New York.

3. On arrival at United States' Customs-house at Rouse's Point, in the district of Champlain, in the said State of New York, I was informed that my said cargo of lumber could not be bonded to the said city of New York, it being contrary to the laws of the United States of America for lumber to be bonded in British bottoms only to unload in the same district in which she entered; and as the cargo of lumber of the said barge was for a different district, I was obliged to unload the said lumber upon another boat, which said boat, being an American bottom, took my said cargo through in bond to the said city of New York.

That the United States authorities or officers in connection with the said Customs-house at Rouse's Point refused to permit the said barge "Berrill" to carry the said lumber in bond to the said city of New York, and that the reason of the same was that she was considered by them a British bottom.

(Signed) ORRIN J. BELDEN.

Sworn before me, at Ottawa, in the county of Carleton, in the province of Ontario, this 14th day of August, 1875,

(Signed) GEO. HAY, J.P.

Inclosure 4 in No. 15.

*Sir E. Thornton to Mr. Hunter.*

Sir,

*Washington, September 3, 1875.*

AT the request of the Administrator of the Government of Canada, I have the honour to submit for your consideration information which he has received respecting certain restrictions placed upon the use of the Champlain Canal by Canadian vessels.

I have understood, from previous correspondence with the Secretary of State, that the State of New York allows the use of its canals to British vessels, in accordance with the provisions of Article XXVII of the Treaty of Washington; but from documents, copies of which I have the honour to inclose, it appears that there are still certain difficulties placed in the way of Canadian vessels availing themselves of the right to navigate the Champlain Canal.

These documents consist, firstly, of a letter from Mr. J. W. McRae, President of the Ottawa and Rideau Forwarding Company, of 20th May, 1875, addressed to the Canadian Minister of Marine and Fisheries, in which he states that "lumber cannot be bonded in Canadian vessels going through the United States' canals." Secondly, a letter from J. Parmeter, Esq., Collector of Customs, Plattsburgh, New York, dated 28th June, 1875, confirming Mr. McRae's assertion, and giving as a reason the provisions of Section 2771 of the Revised Statutes, which reads as follows:—

"Vessels which are not vessels of the United States shall be admitted to unlade only at

ports of entry established by law, and no such vessel shall be admitted to make entry in any other district than in the one in which she shall be admitted to unlade." The third is the affidavit of one Owen Judson Belden, of Fort Ann, Washington County, New York, dated 14th August, 1875, detailing the particulars of a case in which he was refused by the Collector of the United States' Customs at Rouse's Point, during the present summer, to bond a cargo of lumber which he had shipped in the barge "H. F. Burrill," at the port of Brockville, Canada, for the port of New York, on the ground that she was a British bottom, and therefore not entitled to the privilege.

The principal question for consideration is whether the law quoted by the Collector at Plattsburgh will properly bear the interpretation which he alleges is given to it by the Treasury Department of the United States, and which is, in effect, that a British vessel cannot take a cargo in bond through a canal belonging to the United States to a port in another Customs district.

The interpretation being based upon the following words, "And no such vessel shall be admitted to make entry in any other district than the one in which she shall be admitted to unlade," it is submitted that the mere act of the master of the vessel reporting and giving bond at an intermediate port, to secure the ultimate payment of duty upon, or properly accounting for, his cargo at his port of destination (where the said cargo must necessarily be subjected to full examination, as well as entry), cannot be the description of entry to which the terms of the Act apply, but is only adopted as a means of preventing any violation of the Customs laws during the voyage. A vessel bound from a Canadian port to the port of New York must pass through the Champlain Canal to complete her voyage, and the entry proper of such vessel and cargo should take place at the termination of such voyage; any forms essential for the security of the revenue at the intervening ports cannot be properly termed entries in the sense of the law.

With reference to the affidavit of Captain Belden, it will be seen that his vessel was refused the privilege of taking cargo through the canal in bond on the sole ground of being a British bottom.

As no such restrictions are placed upon United States' vessels in their navigation through the Canadian canals, I venture to hope that the question will receive the favourable consideration of the Secretary of the Treasury, and that he will not insist upon the interpretation given by the Collector of Customs at Plattsburgh to Section 2771 of the Revised Statutes.

I have, &c.  
(Signed) EDWD. THORNTON.

#### No. 16.

*Mr. Lister to Mr. Herbert.*

Sir,

*Foreign Office, September 21, 1875.*

I AM directed by the Earl of Derby to transmit to you a despatch and its inclosures from Her Majesty's Minister at Washington\* relative to the virtual exclusion of vessels under the British flag from the canals of the United States by a law which has been so interpreted as to prevent their carrying goods in bond through the canals; and I am to request that, in laying this despatch before the Earl of Carnarvon, you will state to his Lordship that Lord Derby proposes, with his concurrence, to approve the representation which Sir E. Thornton has addressed to the United States' Government on the subject.

I am, &c.  
(Signed) T. V. LISTER.

#### No. 17.

*Sir E. Thornton to the Earl of Derby.—(Received October 3.)*

(Extract.)

*Washington, September 20, 1875.*

WITH reference to my despatch of the 6th instant, in which I inclosed copy of a note which I had addressed to the Acting Secretary of State relative to the navigation of the United States' canals by Canadian vessels, I have the honour to



state that Mr. Hunter's answer reached me on the 14th instant, and I have the honour to inclose copies of it, and of its inclosure. Mr. Hunter merely transmits, without any comment, a letter from the Secretary of the Treasury, in which the latter limits himself to stating that the question had been already considered, and that it had been decided that Canadian vessels could not transport cargo from any port in the United States through the Champlain Canal to any other port of the United States.

I therefore, on the 15th instant, addressed another note to Mr. Hunter, copy of which I have the honour to inclose. In this note I pointed out to him in the first place that, in my previous communication, I had not referred to the transport of goods by Canadian vessels from one port in the United States to another, but from a port in Canada to a port in the United States, through the canals of the latter. I then proceeded to show that the prohibition of such navigation by Her Majesty's subjects on terms of equality with citizens of the United States was an infraction of the above-mentioned Article of the Treaty of Washington.

Mr. Fish returned to Washington on the 16th instant, and answered my note on the 18th instant, merely acknowledging its receipt, and stating that a copy of it had been submitted for the consideration of the Secretary of the Treasury. A copy of Mr. Fish's answer is also inclosed. Your Lordship will notice the observation he makes, that it appears from my note that the privilege is claimed under the XXVIIIth Article of the Treaty of Washington.

Inclosure 1 in No. 17.

*Mr. Hunter to Sir E. Thornton.*

Sir, *Department of State, Washington, September 13, 1875.*

REFERRING to your note of the 3rd instant in relation to the use of the Champlain Canal by Canadian vessels, I have the honour to transmit herewith a copy of a letter upon the subject, dated the 10th instant, which has been received from the Secretary of the Treasury, to whom the matter was referred.

I have, &c.

(Signed) WM. HUNTER, *Acting Secretary.*

Inclosure 2 in No. 17.

*Mr. Bristow to Mr. Fish.*

*Treasury Department, Washington, D.C.,  
September 10, 1875.*

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 7th instant, submitting for my consideration a copy of a communication from the British Minister, relating to the use of the Champlain Canal by Canadian vessels.

I reply that the question presented has been considered by this Department, heretofore, and that it was decided that such vessels could not legally transport cargo from any port in the United States, through said Canal to any port of the United States.

I have, &c.

(Signed) B. H. BRISTOW, *Secretary.*

Inclosure 3 in No. 17.

*Sir E. Thornton to Mr. Hunter.*

Sir, *Washington, September 15, 1875.*

I HAVE the honour to acknowledge the receipt of your note of the 13th instant, inclosing copy of a letter from the Honourable Secretary of the Treasury, relating to the use of the Champlain Canal by Canadian vessels. In this letter, the Secretary states that the question presented has been considered by his Department heretofore, and that it was decided that such vessels could not legally transport cargo from any port in the United States, through said canal, to any other port of the United States.

In my note of the 3rd instant, I did not mean to allude to the transport of goods in Canadian vessels from one port in the United States to another, through the United States' canals. I referred to the transport of goods in British vessels, from a port in Canada, through the United States' canals, to a port in the United States.

The Government of the United States, engaged by the XXVIIIth Article of the Treaty of Washington to urge upon the State Governments to secure to the subjects of Her Britannic Majesty the use of the several State canals connected with the navigation of the lakes and rivers traversed by, or contiguous to, the boundary line between the possessions of the High Contracting Parties, on terms of equality with the inhabitants of the United States. The State of New York, in reply to a representation made to it by the President, declared that there was no law which prohibited the free navigation by Canadian vessels of the canals within that State. It cannot be supposed that the United States' Government, after urging the State Governments to secure that Navigation to British subjects, should itself prohibit it by means of a law of the United States.

The representation submitted in my note of the 3rd instant, was that Canadian vessels should be allowed to carry from a port in Canada cargo in bond through the United States' canals to a port in the United States. United States' vessels have this privilege in their own canals, as well as in those of Canada. By the XXVIIIth Article of the Treaty, Her Majesty's subjects are placed in this respect on terms of equality with the inhabitants of the United States.

The Secretary of the Treasury does not state on what ground the decision has been arrived at by his Department, but if it is intended that British vessels are not to have in the canals of the United States described in the above-mentioned Article the same privileges as citizens of the United States, it certainly appears to be in contravention of that Article.

The Act of Congress of March 2nd, 1799, the correctness of the interpretation of which I ought, perhaps, to have abstained from discussing in my note of the 3rd instant, is, however, if so interpreted, in conflict with the provisions of the XXVIIIth Article of the Treaty; but as its date is long anterior to that of the Treaty, I apprehend that its provisions, so far as they may be in conflict with those of the Treaty, have been superseded, with regard to British vessels, by the stipulations of that international engagement, which received the sanction of the Senate of the United States.

I venture to hope, therefore, that the subject may receive the consideration of the Government of the United States, and that such measures may be taken as will secure to Her Majesty's subjects the free navigation of the canals described in Article XXVII of the Treaty of Washington, on terms of equality with the inhabitants of the United States.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure 4 in No. 17.

*Mr. Fish to Sir E. Thornton.*

Sir,

*Department of State, Washington, September 18, 1875.*

I HAVE the honour to acknowledge the receipt of your note of the 15th instant, in further relation to the use of the Champlain Canal by Canadian vessels, by which it appears that the privilege is claimed under the XXVIIIth Article of the Treaty of Washington.

In reply, I have to inform you that a transcript of your note has been submitted for the consideration of the Secretary of the Treasury.

I have, &c.  
(Signed) HAMILTON FISH.



## No. 18.

*Mr. Lister to Mr. Herbert.*

Sir,

*Foreign Office, October 6, 1875.*

WITH reference to my letter of the 21st ultimo, I am directed by the Earl of Derby to transmit to you a further despatch from Her Majesty's Minister at Washington\* relative to the restrictions on the navigation of the United States' canals by Canadian vessels; and I am to request that, in laying this despatch before the Earl of Carnarvon, you will state to his Lordship that Lord Derby proposes, with his concurrence, to approve the course pursued by Sir E. Thornton in the matter.

I am, &amp;c.

(Signed) T. V. LISTER.

## No. 19.

*Mr. Herbert to Mr. Lister.—(Received October 7.)*

Sir,

*Downing Street, October 6, 1875.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 21st of September, inclosing a copy of a despatch from Sir E. Thornton, with its inclosures, relating to the imposition by the United States' law of certain restrictions upon Canadian vessels in the use of the United States' canals.

Lord Carnarvon desires me to request that you will inform the Earl of Derby that his Lordship concurs in the approval proposed to be conveyed to Sir E. Thornton of the representation which he has addressed in regard to this matter to the United States' Government.

I am, &amp;c.

(Signed) ROBERT G. W. HERBERT.

## No. 20.

*Sir E. Thornton to the Earl of Derby.—(Received October 10.)*

My Lord,

*Washington, September 27, 1875.*

DURING my visit to Mr. Fish at the State Department on the 23rd instant, I referred to my note to Mr. Hunter of the 15th instant, relative to the navigation of the United States' canals by Canadian vessels, and expressed my hope that the Government of the United States would take a liberal view of the question, and would secure to Canadian vessels the enjoyment of all privileges in the canals which were open to United States' vessels. I could not suppose that, after the United States' Government had obtained from the State of New York the assurance that there was no law of that State which could prevent British vessels from using those canals, the Federal Government would interpose its power, either by law or regulations, to render nugatory the permission given by the State.

Mr. Fish replied that it was far from the intention of his Government to do so, and that he had already been urging upon the Secretary of the Treasury to treat the question with as much liberality as possible. But, whilst he could not speak officially on the subject until the question was decided by the Treasury Department, it seemed to him that the Revenue Laws of the United States would prevent the use of the entire navigation of the canals by Canadian vessels. The law of the United States provided that a vessel arriving in the United States with a cargo from abroad should enter and discharge her cargo at the first port of entry she met. In entering the United States through the Champlain Canal, the first port of entry would be Whitehall, at the northern extremity of the Whitehall Canal. There a vessel arriving with a foreign cargo, whether she were American or foreign, would be obliged to discharge her cargo. If a Canadian vessel had a fancy for navigating the canals further on, she could certainly do so, and go as far as Albany; but neither she nor an American vessel could carry a cargo there direct from a foreign port, because Albany would not be the first port of entry, nor, indeed, is it a port of entry at all.

Mr. Fish added that he supposed that the idea and the object of the Canadian Government were that the Canadian boats should be enabled to bring cargo from Canada, through the canals and down the Hudson, to New York. This, he said, was impossible, by reason of the above-mentioned provision of the law with regard to the first port of entry, and because neither by the Treaty of Washington, nor by any other Treaty, had the navigation of the River Hudson been allowed to British or other foreign vessels.

I have, &c.  
(Signed) EDWD. THORNTON.

## No. 21.

*Mr. Lister to Mr. Herbert.*

Sir, *Foreign Office, October 15, 1875.*  
WITH reference to my letter of the 6th instant I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon for any observations which his Lordship may have to offer upon it, a copy of a despatch from Her Majesty's Minister at Washington, reporting a conversation with Mr. Fish, respecting the navigation by Canadian vessels of the United States' canals.\*

I am, &c.  
(Signed) T. V. LISTER.

## No. 22.

*Mr. Malcolm to Mr. Lister.—(Received October 15.)*

Sir, *Downing Street, October 14, 1875.*  
I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 6th instant, and to state that his Lordship concurs in the approval which the Earl of Derby proposes to convey to Sir E. Thornton of the course taken by him in regard to the restrictions placed on the navigation of the United States' canals by Canadian vessels.

In returning herewith the inclosures which accompanied your letter, I am desired to request that copies may be furnished for the records of this Department.

I am, &c.  
(Signed) W. R. MALCOLM.

## No. 23.

*The Earl of Derby to Sir E. Thornton.*

Sir, *Foreign Office, October 16, 1875.*  
I HAVE had under my consideration, in communication with Her Majesty's Secretary of State for the Colonies, your despatch of the 6th ultimo, relating to the imposition, by the United States' law, of certain restrictions upon Canadian vessels in the use of the United States' canals, and I have to acquaint you that the representation which you addressed to Mr. Hunter on the subject is approved by Her Majesty's Government.

I am, &c.  
(Signed) DERBY.

## No. 24.

*The Earl of Derby to Sir E. Thornton.*

Sir, *Foreign Office, October 21, 1875.*  
I HAVE had under my consideration, in communication with Her Majesty's Secretary of State for the Colonies, your despatch of the 20th ultimo, together



with its inclosures, on the subject of the navigation of the United States' canals by Canadian vessels, and I have to convey to you the approval of Her Majesty's Government of the note addressed by you to the Acting Secretary of State, pointing out that the interpretation placed by the United States' Government on the United States' law, which was made to prevent Canadian vessels from carrying goods in bond through the canals, was in conflict with the XXVIIth Article of the Treaty of Washington.

I am, &c.  
(Signed) DERBY.

No. 25.

*Sir E. Thornton to the Earl of Derby.—(Received December 12.)*

(Extract.)

*Washington, November 29, 1875.*

IN my despatch of the 20th of September last I had the honour to forward to your Lordship copy of a note which I had addressed on the 15th of that month to Mr. Hunter, respecting the navigation of the canals in the State of New York by Canadian vessels.

I now inclose copy of a note, and of its inclosure, which I have received from Mr. Fish in answer to my note above-mentioned. Your Lordship will perceive from the contents of the inclosure, which is a letter from the Secretary to the Treasury to Mr. Fish, that the former insists that Canadian vessels coming into the canals in the State of New York must unload at the first port of entry. He seems, however, to admit that the use of the Champlain Canal could be granted to Canadian vessels destined with cargoes to the southern terminus of the Canal, or to ports or places on Lakes Erie or Ontario.

But the Secretary of the Treasury refuses to recognize the right of Canadian vessels to transport cargoes in bond from Canada to New York.

I have forwarded a copy of Mr. Fish's note, and of its inclosure, to his Excellency the Governor-General of Canada.

Inclosure 1 in No. 25.

*Mr. Fish to Sir E. Thornton.*

Sir,

*Department of State, Washington, November 24, 1875.*

REFERRING to your note of the 15th September last, in further relation to the use of the Champlain Canal by Canadian vessels, I have now the honour to inclose herewith a copy of a letter on the subject, dated the 9th ultimo, from the Secretary of the Treasury, to whom a transcript of your note was transmitted.

The delay in forwarding a copy of this note has arisen from certain examinations which it was deemed necessary to make in reference to the question discussed.

I have, &c.  
(Signed) HAMILTON FISH.

Inclosure 2 in No. 25.

*Mr. Bristow to Mr. Fish.*

Sir,

*Treasury Department, Washington, D.C., October 9, 1875.*

I HAVE the honour to acknowledge the receipt of your communication of the 17th ultimo, submitting a transcript of a note from Sir Edward Thornton upon the subject of a decision of this Department of the 25th of June last, reaffirmed on the 10th ultimo, in which the privilege of certain Canadian vessels to use the Champlain Canal was supposed to have been denied.

In a communication addressed to this Department on the 4th of June last, by the Collector of Customs at Plattsburgh, the question was raised whether certain barges belonging to the Ottawa and Rideau Forwarding Company could pass from Ottawa to New York by way of Lake Champlain, the Champlain Canal, and the Hudson River.

Presuming, of course, that these barges were to be laden with Canadian goods, the Collector was informed that such barges were compelled, under Section 2771, Revised Statutes, to unlade at Plattsburgh.

Under the provisions of Section 3097, Revised Statutes, all vessels laden with cargo, arriving in the United States from contiguous territory on the northern frontier, are obliged to make entry, and, under Section 2771, all vessels not of the United States, which made entry, must unlade where they make entry.

That Canadian barges destined for New York, arriving at Plattsburgh, must there enter and unlade, was the decision alluded to in the Department's letter of the 10th ultimo, in response to the communication of the State Department of the 7th ultimo, inclosing the first note of Sir Edward Thornton.

In the letter of the Collector of Plattsburgh the use by Canadian barges of the Champlain Canal was not presented as a question pure and simple, but the question was complicated with another, namely, whether the navigation of navigable waters of the United States (to wit, Lake Champlain and the River Sord), constituting the only accessible inlet to the Champlain Canal on the Canadian side, and other navigable waters of the United States (to wit, the Hudson River), forming the only accessible water communication between the Champlain Canal and the port of New York, were open to Canadian vessels with cargoes bonded to New York.

In view of the fact that the real question presented by the Collector was whether the navigable waters of the United States, contiguous to the northern frontier, were open to the navigation of Canadian vessels laden with cargoes in bond destined for New York, the Department could only reply that, under the provisions of Section 2771, Revised Statutes, such vessels must enter and unlade at the first port of entry at which they arrive in these waters.

But the Department might have gone further, and shown that under the first proviso of Section 4347, Revised Statutes, Congress had defined the limits within which British vessels could, under the Treaty of Washington of May 8, 1871, carry foreign merchandize from port to port within the United States, which limits are defined to be "upon the St. Lawrence, the great lakes, and the rivers connecting the same."

In his note of the 15th ultimo, the British Minister declares the purport of his previous note of the 3rd ultimo to have been to represent that Canadian vessels should be allowed to carry from a port in Canada cargoes in bond through the United States' canals to a port in the United States; that United States' vessels have this privilege in their own canals as well as in those of Canada; and that by the XXVIIth Article of the Treaty, Her Majesty's subjects are placed in this respect on terms of equality with the inhabitants of the United States.

Though by the terms of that Article the subjects of Her Majesty are to have the use of the several State canals connected with the navigation of the lakes or rivers traversed by or contiguous to the boundary line between the possessions of the High Contracting Parties, on terms of equality with the inhabitants of the United States, the purpose of the stipulation was, in my view, to grant the free use of such canals only in so far as they might facilitate communication between ports and places lying on the lakes and rivers in question, and not as the furnished communication between ports and places not lying on those lakes and rivers. The use of the Champlain Canal, in this view, could be granted to Canadian vessels destined with cargoes to the southern terminus of the canal, or to ports or places on Lakes Erie or Ontario, but not to Canadian vessels destined to ports and places lying remote from the waters of the northern lakes and rivers contiguous to the frontier between the two countries. The use of the Champlain Canal is to be given to Canadian vessels under the Treaty, in the same sense in which the use of the Welland Canal is granted to citizens of the United States, or the use of the St. Clair Flats' Canal to Her Majesty's subjects, namely, in furtherance of communication between ports and places lying, to use the language of the legislative construction given to the Treaty by Section 4347, Revised Statutes, "upon the St. Lawrence, the great lakes, and the rivers connecting the same."

In the face of the construction given to the Treaty by Congress, this Department does not feel authorized to recognize the right of Canadian vessels to transport cargoes in bond from Canada to New York.

I have, &c.

(Signed) B. H. BRISTOW, *Secretary*.



## No. 26.

*Lord Tenterden to Mr. Herbert.*

Sir, *Foreign Office, December 16, 1875.*  
 WITH reference to Mr. Lister's letter of the 6th of October, I am directed by the Earl of Derby to transmit to you, to be laid before the Earl of Carnarvon, for his Lordship's information, the accompanying copy of a further despatch from Her Majesty's Minister at Washington, together with its inclosures, relative to the restrictions on the navigation of canals in the United States by Canadian vessels.\*

I am, &c.  
 (Signed) TENTERDEN.

## No. 27.

*Sir E. Thornton to the Earl of Derby.—(Received March 27.)*

(Extract.) *Washington, March 13, 1876.*  
 SOME days ago Sir Alexander T. Galt came from Canada to the United States, and paid me a visit at Washington. He took the opportunity of showing me, by the request of Mr. Mackenzie, as he said, a Memorandum giving the substance of the correspondence which has taken place relative to the navigation of the canals in the State of New York by Canadian vessels, and urged that I should renew my endeavours to induce the Government of the United States to ensure to British subjects the privilege stipulated by the Treaty of 1871.

In the above-mentioned Memorandum my attention was called to an Act of Congress of September 26th, 1850, which empowers the Secretary of the Treasury to permit vessels laden with the products of Canada to lade or unlade at any port or place within any collection district of the United States which he might designate. The substance of this Act is to be found in section 3129 of the "Revised Statutes of the United States." During my visit to the State Department, on the 9th instant, I called Mr. Fish's attention to the Act in question, again urging upon him that the stipulation of the XXVIIth Article of the Treaty of 1871 should not be rendered illusory by appealing to an Act of 1799 (see section 2771, "Revised Statutes of the United States"), which obliges vessels arriving from abroad to discharge at the first port of entry at which they touch. Mr. Fish seemed to be unaware of the existence of the Act of 1850, and said that he would consult with the Secretary of the Treasury upon the subject.

He has since told me that he has spoken to Mr. Bristow, and that the result of their conversation is that he will address a communication to him, suggesting that he should avail himself of the power granted by the Act of 1850, and should name Albany and Troy as two points at which vessels coming with produce from Canada might discharge their cargo, and take in a return cargo. These two places are, as it were, at the head of the tide-waters of the Hudson; and it appears to me that if Canadian vessels were allowed to reach them they would enjoy the navigation of the whole length of the canals in the State of New York.

Mr. Fish assured me that American vessels arriving with cargo from Canada were also now obliged to unload at the first port of entry at which they touched, and that if they were hereafter allowed to go on to Albany or Troy they would not be allowed to discharge at any intervening point. The same restriction would be imposed upon Canadian vessels; and, further, the latter would not be allowed to transport cargo from one port to another in the United States, which operation would be one of coasting trade, now reserved to American vessels.

## No. 28.

*Mr. Malcolm to Lord Tenterden.—(Received April 27.)*

My Lord, *Downing Street, April 26, 1876.*  
 WITH reference to previous correspondence respecting the navigation of United States' canals by Canadian vessels, under the Treaty of Washington, I am directed by

\* No. 25.

the Earl of Carnarvon to transmit to you, to be laid before the Earl of Derby, the inclosed copy of a despatch from the Governor-General of Canada, inclosing a copy of a Report of his Privy Council relating to this question.

Lord Carnarvon hopes that if, as would appear to be the case, the law cited by the Dominion Government removes any technical difficulty in complying with the reasonable demands of the Dominion, Sir E. Thornton may be instructed to press the United States' Government to carry out the engagements of the Treaty in a liberal spirit.

I am, &c.  
(Signed) W. R. MALCOLM.

Inclosure 1 in No. 28.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord,

Ottawa, April 6, 1876.

I HAVE the honour to transmit herewith, for your Lordship's information, a copy of a report of my Privy Council, a duplicate of which I have this day communicated to Her Majesty's Minister at Washington, relative to the navigation by Canadian vessels of canals in the United States under the Treaty of Washington.

I have, &c.  
(Signed) DUFFERIN.

Inclosure 2 in No. 28.

*Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General, on the 5th April, 1876.*

THE Committee of Council have had under consideration the report of the Honourable the Minister of Customs, to whom has been referred the correspondence with the Washington Government concerning the navigation of the United States canals by Canadian vessels.

The Minister states that he has considered the representations made by Mr. Secretary Fish in his despatch of 27th September, 1875, in which he remarks: "The law of the United States provided that a vessel arriving in the United States with a cargo from abroad should enter and discharge her cargo at the first port of entry she met, and that he supposed that the idea and object of the Canadian Government were that the Canadian boats should be enabled to bring cargo from Canada through the canals and down the Hudson through to New York. That this is impossible by reason of the above provisions of the law with regard to the first port of entry, and because neither by the Treaty of Washington, nor by any other Treaty, had the navigation of the River Hudson been allowed to British or other foreign vessels."

The Minister further states that, in a subsequent despatch of Mr. Secretary Bristow, dated 9th October, 1875, after reciting the circumstances and quoting the several laws bearing upon the case, he concludes with the following definite statement:—

"In the face of the construction given to the Treaty by Congress, this Department does not feel authorized to recognize the right of Canadian vessels to transport cargoes in bond from Canada to New York."

The Minister observes that, in this decision, apart from Treaty obligations, the Secretary of the Treasury does not appear to have taken into consideration an Act of Congress passed on the 26th September, 1850, which is to be found in the Statutes at large page 469, and which has been re-enacted and confirmed in the revised Statutes of 1875, page 603, sec. 3, 129, intituled "An Act to authorize the Secretary of the Treasury to permit vessels from the British North American provinces to lade and unlade at such places in any collection district in the United States as he may designate."

That this Act provides that "the Secretary of the Treasury, with the approbation of the President of the United States, provided the latter shall be satisfied that similar privileges are extended to vessels of the United States in the Colonies hereinafter mentioned, is hereby authorized under such regulations as he may prescribe to protect the revenue from fraud, to permit vessels laden with the products of Canada, New



Brunswick, Nova Scotia, Newfoundland, and Prince Edward Island, or either of them, to lade or unlade at any port or place within any collection district which he may designate."

The Minister, therefore, recommends that your Excellency be requested to communicate with Sir Edward Thornton, Her Majesty's Minister at Washington, and request him to call the attention of the Government of the United States to the above recited Act, and to press upon that Government the making of such arrangements as will at once secure the same privileges to Canadian vessels in United States' canals as are accorded to United States' vessels in Canadian canals.

The Committee concur in the foregoing recommendation, and submit the same for your Excellency's approval.

Certified,  
(Signed) W. A. HIMSWORTH.

No. 29.

*Lord Tenterden to Mr. Herbert.*

Sir, *Foreign Office, May 6, 1876.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter of the 26th ultimo, inclosing copy of a despatch from the Governor-General of Canada, with a Minute of the Canadian Privy Council, calling attention to an Act of Congress of 1850, which authorizes the United States' Treasury to permit Canadian vessels to lade and unlade at certain parts of the United States' canals, and suggesting that Sir E. Thornton be instructed to press the United States' Government to carry out the engagements of the Treaty in a liberal spirit; and I am, in reply, to request that you will inform Lord Carnarvon that a copy of your above-mentioned letter will be sent to Sir Edward Thornton for his information.

I am, &c.  
(Signed) TENTERDEN.

No. 30.

*The Earl of Derby to Sir E. Thornton.*

Sir, *Foreign Office, May 6, 1876.*

WITH reference to your despatch of the 13th of March, I transmit to you herewith, for your information, a copy of a letter from the Colonial Office,\* inclosing copy of a despatch from the Governor-General of Canada in regard to the navigation of United States' canals by Canadian vessels under the Treaty of Washington, and suggesting that you should be instructed to press the United States' Government to carry out the engagements of the Treaty in a liberal spirit.

I am, &c.  
(Signed) DERBY.

No. 31.

*Sir E. Thornton to the Earl of Derby.—(Received May 20,)*

My Lord, *Washington, May 8, 1876.*

I HAVE the honour to inclose copy of a note and of its inclosure, which I have received from Mr. Fish relative to the navigation of the canals in the State of New York by Canadian vessels. In this note Mr. Fish transmits me copy of a communication from the Treasury Department, of which, though the language is obscure, the substance seems to be that Canadian vessels may pass to the southern terminus of the Champlain Canal.

During my interview with Mr. Fish on the 4th instant, I pointed out to him that I did not quite understand what the Champlain Canal signified, nor where was its southern terminus, and that I thought that if it was really intended to comply with the

terms of the Treaty of 1871, it would be desirable to express that intention in clearer words.

Mr. Fish replied that he considered that the Champlain Canal signified the Canal leading from the southern extremity of Lake Champlain, and connecting it with Troy and Albany, and that Albany was the southern terminus of that Canal. This Canal is generally called the Whitehall Canal.

I further asked whether Canadian vessels would be able to navigate the Erie Canal, which begins at Buffalo from Lake Erie, and the Oswego Canal, which enters from Lake Ontario at Oswego, and connects with the Erie Canal, and to proceed through those canals to Albany. Mr. Fish answered that he understood that Canadian vessels could certainly navigate those canals; but, upon my saying that I was not satisfied that this could be inferred from the contents of the communication from the Treasury Department, he suggested that I should address him a note expressing my views upon the subject.

In accordance with this suggestion, I addressed to Mr. Fish the note of which I have the honour to inclose a copy, but to which I have not as yet received an answer. I have also forwarded copies of the two notes to the Governor-General of Canada.

I have, &c.  
(Signed) EDWD. THORNTON.

Inclosure 1 in No. 31.

*Mr. Fish to Sir E. Thornton.*

Sir,

*Department of State, Washington, May 3, 1876.*

REFERRING to previous correspondence in reference to the privileges to be accorded to Canadian vessels in the use of the canals in the United States, and particularly in the State of New York, I have the honour to inform you that the attention of the Secretary of the Treasury having been called to the question, a reply was received from that officer upon the 5th of April, stating that a prior letter of October 10, but which is supposed to be an error for a letter of October 9, a copy of which was transmitted to you under date of November 24, 1875, concedes to Canadian vessels the privilege of passing to the southern terminus of the Champlain Canal, and that, if desired, instructions would be issued to the proper Custom's Officers to lend their aid thereto upon the same terms as are accorded to vessels of the United States, but suggesting that some further communication should be made on your part to that end.

I had supposed that this information had been communicated to you, but it appears that it was intended to confer with you on the question by reason of the suggestion that some further expression of your wishes should be made known.

I have now the honour to inclose you a copy of this letter of the Secretary of the Treasury, bearing date the 5th of April, and to express my regret that delay has occurred in conveying this information to you.

I have, &c.  
(Signed) HAMILTON FISH.

Inclosure 2 in No. 31.

*Mr. Corrant to Mr. Fish.*

Sir,

*Treasury Department, April 5, 1876.*

I HAVE the honour to acknowledge the receipt of your letter of the 11th ultimo, further in regard to the right, under the Treaty of Washington or existing United States' laws, of Canadian vessels to pass through the Champlain Canal laden with products of the Dominion of Canada, to the southern terminus of the Canal, or to points beyond.

Without considering the question now presented as to the applicability of section 3,129 of the Revised Statutes to the case, I have the honour to call your attention to the letter of this Department to you of the 10th of October last, in which the following language was used:—"The purpose of the stipulation (in Article XXVII of the Treaty of Washington) was, in my view, to grant the free use of such canals only in so far as they might facilitate communications between ports and places lying on the



lakes and rivers in question, and not as they furnished communication between ports and places not lying on those lakes and rivers. The use of the Champlain Canal, in this view, could be granted to Canadian vessels destined with cargoes to the southern terminus of the Canal, or to ports or places on Lakes Erie or Ontario."

In your letter of the 11th ultimo you state that you understand Sir Edward Thornton to say that it is not sought on the part of Canadian vessels to obtain the right to navigate the Hudson River, but only to pass to the terminus of the Canal at tide water.

It will be seen that the letter of this Department of October 10 concedes the right of Canadian vessels to pass to the southern terminus of the Champlain Canal, and if desired instructions will be given to the proper Customs officers to lend their aid thereto, upon the same terms as are now accorded to vessels of the United States.

The Department prefers to receive a further communication from Sir Edward Thornton upon the subject, before giving such instructions.

I have, &c.  
(Signed) CHAS. F. CORRANT, *Acting Secretary.*

Inclosure 3 in No. 31.

*Sir E. Thornton to Mr. Fish.*

Sir,

*Washington, May 4, 1876.*

I HAVE the honour to acknowledge the receipt of your note of yesterday's date, transmitting copy of a letter of the Secretary of the Treasury relative to the navigation of the canals of the State of New York by Canadian vessels. In this letter Mr. Bristowe states "that the letter of this department of October 10 concedes the right of Canadian vessels to pass to the southern terminus of the Champlain Canal, and, if desired, instructions will be given to the proper Customs' officers to lend their aid thereto, upon the same terms as are now accorded to vessels of the United States."

I presume that the city of Albany may be considered to be the "southern terminus of the Champlain Canal," and that Canadian vessels will be allowed to proceed to Albany by Lake Champlain and the Champlain Canal, on the same terms as are now accorded to vessels of the United States.

Neither can I doubt from the tenor of the letter of the 5th ultimo, addressed to you by the Secretary of the Treasury, that Canadian vessels may enter the Erie Canal at Buffalo, and the Oswego Canal at the place of that name, and proceed in like manner to Albany by those canals.

I shall feel much obliged if you will inform me whether the conclusions which I have arrived at are correct.

I have, &c.  
(Signed) EDWD. THORNTON.

No. 32.

*Lord Tenterden to Mr. Herbert.*

Sir,

*Foreign Office, May 22, 1876.*

I AM directed by the Earl of Derby to transmit to you, with reference to my letter of the 6th instant, a copy of a despatch from Sir E. Thornton,\* inclosing copies of correspondence with Mr. Fish, in regard to the navigation of United States' canals by Canadian vessels; and I am to request that, in laying this despatch before the Earl of Carnarvon, you will inform him that Lord Derby proposes, with his Lordship's concurrence, to approve the course pursued by Sir E. Thornton in the matter.

I am, &c.  
(Signed) TENTERDEN.

## No. 33.

*Mr. Malcolm to Lord Tenterden.—(Received June 2.)*

Sir,

*Downing Street, June 1, 1876.*

I AM directed by the Earl of Carnarvon to acknowledge the receipt of your letter of the 22nd ultimo, inclosing a despatch from Her Majesty's Minister at Washington forwarding a correspondence with Mr. Fish relating to the navigation of the United States' canals by Canadian vessels.

Lord Carnarvon concurs with Lord Derby in the proposed approval of the course pursued by Sir E. Thornton in this matter.

I am, &amp;c.

(Signed) W. R. MALCOLM.

## No. 34.

*The Earl of Derby to Sir E. Thornton.*

Sir,

*Foreign Office, June 6, 1876.*

I REFERRED to Her Majesty's Secretary of State for the Colonies your despatch of the 8th ultimo, together with its inclosures, relative to the navigation of the United States' canals by Canadian vessels, and I have to convey to you the approval of Her Majesty's Government of the course adopted by you in the matter.

I am, &amp;c.

(Signed) DERBY.

## No. 35.

*Sir E. Thornton to the Earl of Derby.—(Received June 25.)*

(Extract.)

*Washington, June 12, 1876.*

I HAVE the honour to inclose copy of a note which I have at length received from Mr. Fish, relative to the navigation of the canals of the State of New York by Canadian vessels. On its receipt, I at once sent a copy of it to the Governor-General of Canada, and at the same time telegraphed to his Excellency, informing him that I had received it; for, as this is the season when the produce of Canada is for the most part transported into the State of New York, I was aware that the Canadian Government would be anxious to be informed that the navigation of the canals of that State was open to Canadian vessels.

As far as I am able to judge, the terms of Mr. Fish's note are satisfactory, and Canadian vessels with cargoes may now proceed by Lake Champlain and the Whitehall and Erie Canals to Troy and Albany, or by the Erie Canal, entering either at Buffalo from Lake Erie, or at Oswego from Lake Ontario, to Albany and Troy. I hope, however, soon to receive from Lord Dufferin the acquiescence of the Canadian Government in the orders which have at length been given.

## Inclosure in No. 35.

*Mr. Fish to Sir E. Thornton.*

Sir,

*Department of State, Washington, June 7, 1876.*

REFERRING to previous correspondence upon the subject of the navigation of the canals of the United States by Canadian vessels, under Article XXVII of the Treaty of Washington, I have now the honour to inform you that I am informed by the Secretary of the Treasury that instructions have been issued to the Collector of Customs at Plattsburgh, New York, to allow Canadian barges and other vessels laden with imported goods to pass that port, on a clearance to Albany, or to any port intermediate between Plattsburgh and Albany, under such conditions and regulations as would govern the navigation of American barges or vessels coming from Canada, under section 3,102 of the Revised Statutes, or under such regulations as would apply



to foreign vessels generally when importing foreign cargoes, under section 4,347 of the Revised Statutes, but without regard to the several provisions in this section which apply especially to imported goods transported in bond. I am further informed that the Collector has been instructed to allow free transit to all return cargoes shown by the manifests of Canadian vessels to be destined for Canada.

It is further stated that instructions, similar in tenour and object to those addressed to the Collector at Plattsburgh, will be given to the Collector of Customs at Buffalo and Oswego, New York, and Burlington, Vermont, and that the Surveyor of Customs at Albany, and the Deputy-Collector at Troy, New York, will be notified of these orders.

I have, &c.  
(Signed) HAMILTON FISH.

No. 36.

*Mr. Malcolm to Lord Tenterden.—(Received July 11.)*

(Extract.)

*Downing Street, July 11, 1876.*

WITH reference to previous correspondence relating to the navigation of United States canals by Canadian vessels, I am directed by the Earl of Carnarvon to transmit to you, for the information of the Earl of Derby, a copy of a despatch received on the 28th ultimo from the Governor-General of Canada, together with such of its inclosures as are not already in the possession of the Foreign Office.

Inclosure 1 in No. 36.

*The Earl of Dufferin to the Earl of Carnarvon.*

My Lord,

*Government House, Ottawa, June 13, 1876.*

REFERRING to my despatch No. 92, April 6, and to previous correspondence relating to the navigation of United States' Canals by Canadian vessels under the Treaty of Washington, I have the honour to transmit herewith, for your Lordship's information, copies of further communications and inclosures which I have received from Her Majesty's Minister at Washington on this subject.

Your Lordship will observe, from the inclosure in Sir E. Thornton's last despatch, that Mr. Fish states that he has been informed by the Secretary of the Treasury that instructions have been issued by the United States' Customs' authorities to permit the free navigation of the canals of the State of New York to Canadian vessels on the same terms and conditions as are accorded to United States' vessels.

I have, &c.  
(Signed) DUFFERIN.

Inclosure 2 in No. 36.

*Sir E. Thornton to the Earl of Dufferin.*

My Lord,

*Washington, April 10, 1876.*

WITH reference to your Excellency's despatch of the 8th instant, I have the honour to inform you that about a month ago I called Mr. Fish's attention to the Act of Congress of September 26th, 1850, which empowers the Secretary of the Treasury to allow vessels laden with the products of Canada, &c., to lade or unlade at any port or place within any collection district which he may designate.

After consideration of this Act, I understand from Mr. Fish that he addressed a letter to the Secretary of the Treasury, suggesting to him to avail himself of the power granted by it, and to designate Albany and Troy as two places at which vessels coming from Canada might discharge cargo.

On the 6th instant I asked Mr. Fish whether he had received any answer to the above communication. He replied in the negative. Mr. Bristow is now absent from Washington in Kentucky.

I have, &c.  
(Signed) EDWD. THORNTON.

## Inclosure 3 in No. 36.

*Sir E. Thornton to the Earl of Dufferin.*

My Lord,

Washington, May 4, 1876.

I HAVE the honour to inclose, for your Excellency's information, copy of a note and of its inclosure, which I received this morning from Mr. Fish, and of my answer to that note.

I shall of course communicate to your Excellency Mr. Fish's reply as soon as I shall receive it.

I have, &amp;c.

(Signed) EDWD. THORNTON.

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Inclosure 4 in No. 36.*Sir E. Thornton to the Earl of Dufferin.*

(Extract.)

Washington, June 8, 1876.

I HAVE the honour to inclose copy of a note which I have received from Mr. Fish, with regard to the navigation of the Canals in the State of New York by Canadian vessels.

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357  
NORTH AMERICA. No. 8 (1876).

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FURTHER CORRESPONDENCE

RESPECTING THE

DETERMINATION OF THE BOUNDARY

BETWEEN

CANADA AND THE UNITED STATES.

(In continuation of "North America No. 1, 1875.")

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*Presented to both Houses of Parliament by Command of Her Majesty.*  
1876.

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## Further Correspondence respecting the Determination of the Boundary between Canada and the United States.

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*Major Cameron, R.A., to the Earl of Derby.—(Received June 16.)*

*Office of the North American Boundary Commission,  
London, June 15, 1876.*

My Lord,

I HAVE the honour to forward herewith a record of the proceedings at my last meeting with Mr. Archibald Campbell, the United States' Commissioner appointed to act with me in ascertaining and marking the boundary from the most north-western point of the Lake of the Woods to the Rocky Mountains between the territories of Her Majesty and those of the United States.

2. The Record consists of—

(A.) A detailed list of the astronomical stations at which observations were taken, and whence the exact position of the line was deduced.

(B.) A detailed descriptive list of 388 marks placed on the line.

(C.) A set of twenty-four maps\* (exclusive of an index sheet) on a scale of one inch to two miles, embracing an area of over 9,000 square miles, illustrating topographical features in detail, and indicating the positions of the astronomical stations and of the marks on the line.

(D.) A Minute that the marks above referred to are accepted by Mr. Campbell and myself as being on the line defined by the 2nd Article of the Convention of London, signed on the 20th October, 1818, that we agree that between any two neighbouring marks the boundary is a line having the curvature of a parallel of 49 degrees north latitude, and that, in the event of any mark placed on the line being obliterated beyond recognition, its lost site is to be recovered by reference to its recorded position relatively to the nearest unobliterated mark or marks.

3. These documents, including the maps, have been made in duplicate, and signed by both Mr. Campbell and myself; one copy I now forward to your Lordship, the other has been retained by Mr. Campbell for delivery to the Government of the United States.

4. Of the 388 marks placed on the boundary line there are eight in an extensive swamp, between thirty-three and forty-two miles west from the Lake of the Woods, which are of a comparatively temporary character. The softness of the subsoil precluded the placing of permanent monuments by the expedition in the swamp, and the marks here consist of a collection of forty-feet poles driven down twenty feet. It will probably be considered unnecessary to maintain these, or to incur the great expense which would be involved in substituting permanent marks in their stead.

5. The iron pillars referred to in the accompanying list should be coated at intervals of a few years, to preserve them from corrosion, and the cairns and earthen mounds should be inspected periodically with a view to repairing such of them as may need it.

I have, &c.

(Signed) D. R. CAMERON, *Major, R.A.,  
Her Majesty's Commissioner.*

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\* These Maps are in the Foreign Office Library.

## Inclosure 1.

(A.) LIST of the Astronomical Stations observed by the Joint Commission for the determination of the International Boundary Line from the North-West Angle of the Lake of the Woods to the Rocky Mountains.

| No. | Name of the Astronomical Station.            | Distance from<br>Lake of Woods<br>Station. |        | Longitude<br>West of<br>Greenwich. |    |      | Remarks.                                     |
|-----|----------------------------------------------|--------------------------------------------|--------|------------------------------------|----|------|----------------------------------------------|
|     |                                              | Miles.                                     | Links. | °                                  | '  | "    |                                              |
|     | North-West Angle .. ..                       | 0                                          | 0      | 95                                 | 08 | 39.7 | Latitude 49° 22' 19.137'                     |
| 1   | Lake of the Woods (joint) ..                 | 0                                          | 0      | 95                                 | 16 | 55.3 |                                              |
| 2   | Pine River .. ..                             | 31                                         | 7,205  | 95                                 | 59 | 01.1 |                                              |
| 3   | West Roseau Ridge .. ..                      | 68                                         | 1,283  | 96                                 | 46 | 51.9 |                                              |
| 4   | Red River (joint) .. ..                      | 88                                         | 4,936  | 97                                 | 13 | 51.5 |                                              |
| 5   | Pointe de Michel (joint) ..                  | 108                                        | 5,962  | 97                                 | 40 | 25.2 |                                              |
| 6   | Pembina Mountain, East (joint) ..            | 124                                        | 2      | 98                                 | 00 | 33   |                                              |
| 7   | Pembina Mountain, West ..                    | 135                                        | 6,307  | 98                                 | 16 | 06.3 |                                              |
| 8   | Long River .. ..                             | 165                                        | 1,305  | 98                                 | 54 | 52.1 |                                              |
| 9   | Sleepy Hollow .. ..                          | 183                                        | 3,911  | 99                                 | 19 | 02.4 |                                              |
| 10  | Turtle Mountain, East ..                     | 203                                        | 7,729  | 99                                 | 46 | 04.3 |                                              |
| 11  | Turtle Mountain, West ..                     | 238                                        | 1,510  | 100                                | 31 | 13.9 |                                              |
| 12  | 1st Souris (or Mouse River) ..               | 258                                        | 744    | 100                                | 57 | 29.8 |                                              |
| 13  | South Antler .. ..                           | 281                                        | 1,973  | 101                                | 28 | 03   |                                              |
| 14  | 2nd Souris (or Mouse River) ..               | 303                                        | 7,150  | 101                                | 57 | 56.1 |                                              |
| 15  | United States' No. 8 Astronomical<br>Station | 325                                        | 3,846  | 102                                | 26 | 25.2 |                                              |
| 16  | Short Creek .. ..                            | 343                                        | 2,892  | 102                                | 50 | 00.9 | Observed by the Joint Com-<br>mission, 1861. |
| 17  | 3rd Mouse River .. ..                        | 359                                        | 3,254  | 103                                | 11 | 11.3 |                                              |
| 18  | Grand Coteau .. ..                           | 377                                        | 2,977  | 103                                | 34 | 53.7 |                                              |
| 19  | Mid Coteau .. ..                             | 400                                        | 4,925  | 104                                | 05 | 34   |                                              |
| 20  | Big Muddy .. ..                              | 426                                        | 5,035  | 104                                | 39 | 53.6 |                                              |
| 21  | Bully Spring .. ..                           | 451                                        | 1,841  | 105                                | 12 | 21.4 |                                              |
| 22  | Poplar River .. ..                           | 473                                        | 3,454  | 105                                | 41 | 39.2 |                                              |
| 23  | West Poplar .. ..                            | 496                                        | 6,906  | 106                                | 12 | 34.4 |                                              |
| 24  | Little Rocky .. ..                           | 522                                        | 4,742  | 106                                | 46 | 31.5 |                                              |
| 25  | Frenchman's Creek .. ..                      | 550                                        | 6,740  | 107                                | 23 | 48.2 |                                              |
| 26  | Cottonwood Coulé .. ..                       | 567                                        | 3,881  | 107                                | 45 | 45.9 |                                              |
| 27  | Pool on Prairie .. ..                        | 588                                        | 1,931  | 108                                | 13 | 09.2 |                                              |
| 28  | Near Goose Lake .. ..                        | 615                                        | 3,202  | 108                                | 48 | 59.6 |                                              |
| 29  | East Fork .. ..                              | 642                                        | 218    | 109                                | 24 | 27.8 |                                              |
| 30  | West Fork .. ..                              | 655                                        | 2,357  | 109                                | 41 | 38.2 |                                              |
| 31  | Milk River Lake .. ..                        | 677                                        | 281    | 110                                | 10 | 19.5 |                                              |
| 32  | Milk River .. ..                             | 702                                        | 3,023  | 110                                | 43 | 46.1 |                                              |
| 33  | East Butte .. ..                             | 723                                        | 383    | 111                                | 11 | 02.5 |                                              |
| 34  | West Butte .. ..                             | 739                                        | 5,770  | 111                                | 33 | 02.6 |                                              |
| 35  | Red Creek .. ..                              | 760                                        | 3,160  | 112                                | 00 | 19.5 |                                              |
| 36  | 2nd Milk River (or South Branch) ..          | 785                                        | 0,279  | 112                                | 32 | 50.3 |                                              |
| 37  | North Branch, Milk River ..                  | 804                                        | 3,361  | 112                                | 58 | 25.2 |                                              |
| 38  | Rocky Mountains .. ..                        | 825                                        | 6,138  | 113                                | 26 | 35.3 |                                              |
| 39  | Belly River .. ..                            | 836                                        | 3,385  | 113                                | 40 | 39   |                                              |
| 40  | Chief Mountain Lake .. ..                    | 846                                        | 240    | 113                                | 53 | 19.7 |                                              |
|     | Akamina .. ..                                | 853                                        | 2,529  | 114                                | 02 | 56.5 |                                              |

(Signed)

D. R. CAMERON, Major, R.A., Her  
Britannic Majesty's Commissioner.ARCHIBALD CAMPBELL, United  
States' Commissioner.W. J. TWINING, Captain of Engi-  
neers, United States' Chief Astronomer.S. ANDERSON, Captain, R.E.,  
British Chief Astronomer.

May 29, 1876.



## Inclosure 2.

(B.) LIST of the Monuments marking the International Boundary Line from the North-West Angle of the Lake of the Woods to the Rocky Mountains.

## Monuments Marking due South Line.

| No. | Distance South of North-West Point. |        | Nature of Monument. |    |    | Longitude West of Greenwich. | Remarks.                                             |
|-----|-------------------------------------|--------|---------------------|----|----|------------------------------|------------------------------------------------------|
|     | Miles.                              | Links. |                     |    |    | ° ' "                        |                                                      |
| ..  | ..                                  |        | Not marked          | .. | .. | 95 08 57.7                   | North - west point in swamp. Latitude 49° 23' 50.3". |
| 1   | 1                                   | 3,071  | Iron pillar         | .. | .. | 95 08 57.7                   | Latitude 49° 22' 38.2".                              |
| 2   | 1                                   | 7,001  | "                   | .. | .. | 95 08 57.7                   | Latitude 49° 22' 12.6". North of Dawson Road.        |
| 3   | 2                                   | 2,797  | "                   | .. | .. | 95 08 57.7                   | Latitude 49° 21' 47.8".                              |
| 4   | 3                                   | 3,626  | "                   | .. | .. | 95 08 57.7                   | Latitude 49° 20' 50.4".                              |
| 5   | 5                                   | 945    | "                   | .. | .. | 95 08 57.7                   | Latitude 49° 19' 23.6".                              |
| 6   | 6                                   | 1,882  | Granite cairn       | .. | .. | 95 08 57.7                   | Latitude 49° 18' 25.4".                              |
| 7   | 7                                   | 4,351  | Iron pillar         | .. | .. | 95 08 57.7                   | Latitude 49° 17' 17.2".                              |

\* Indicates that an iron tablet was buried 2 feet deep and 10 feet east of the Monument, and † indicates that an iron tablet was buried also in the centre of the monument.

| No. | Distance from Lake of the Woods. |        | Nature of Monument.          |    |    | Longitude West of Greenwich. | Remarks.                                                                                                   |
|-----|----------------------------------|--------|------------------------------|----|----|------------------------------|------------------------------------------------------------------------------------------------------------|
|     | Miles.                           | Links. |                              |    |    | ° ' "                        |                                                                                                            |
| 1   | ..                               |        | Stone cairn, 7½ ft. by 8 ft. | .. | .. | 95 16 55.3                   | Lake of the Woods Astronomical Station.                                                                    |
| 2   | 3                                | 0      | Earth mound, 7 ft. by 14 ft. | .. | .. | 95 20 52.8                   |                                                                                                            |
| 3   | 5                                | 0      | " 7 ft. by 14 ft.            | .. | .. | 95 23 31.1                   |                                                                                                            |
| 4   | 9                                | 0      | Iron pillar                  | .. | .. | 95 28 47.8                   |                                                                                                            |
| 5   | 12                               | 0      | Earth mound, 7 ft. by 14 ft. | .. | .. | 95 32 45.4                   |                                                                                                            |
| 6   | 15                               | 0      | " 7 ft. by 14 ft.            | .. | .. | 95 36 42.9                   |                                                                                                            |
| 7   | 17                               | 0      | Iron pillar                  | .. | .. | 95 39 21.2                   | East of North-east Roseau Crossing.                                                                        |
| 8   | 18                               | 2,080  | Earth mound, 7 ft. by 14 ft. | .. | .. | 95 41 01.0                   |                                                                                                            |
| 9   | 21                               | 0      | Iron pillar                  | .. | .. | 95 44 37.9                   |                                                                                                            |
| 10  | 24                               | 1,548  | Earth mound, 7 ft. by 14 ft. | .. | .. | 95 48 50.8                   |                                                                                                            |
| 11  | 25                               | 6,804  | Iron pillar                  | .. | .. | 95 51 02.0                   | On ridge.                                                                                                  |
| 12  | 29                               | 0      | Earth mound, 7 ft. by 14 ft. | .. | .. | 95 55 11.3                   | At Pine River.                                                                                             |
| 13  | 30                               | 0      | " 7 ft. by 14 ft.            | .. | .. | 95 56 30.5                   |                                                                                                            |
| 14  | 32                               | 5,154  | " 7 ft. by 14 ft.            | .. | .. | 96 00 00                     | Marking eastern boundary of Manitoba.                                                                      |
| 15  | 33                               | 4,936  | " 10 ft. by 6 ft.            | .. | .. | 96 01 16.9                   |                                                                                                            |
| 16  | 34                               | 4,936  | Timber                       | .. | .. | 96 02 36.0                   | In Great Roseau Swamp.                                                                                     |
| 17  | 35                               | 4,936  | "                            | .. | .. | 96 03 55.2                   | Ditto.                                                                                                     |
| 18  | 36                               | 4,936  | "                            | .. | .. | 96 05 14.4                   | Ditto.                                                                                                     |
| 19  | 37                               | 4,936  | "                            | .. | .. | 96 06 33.6                   | Ditto.                                                                                                     |
| 20  | 38                               | 4,936  | "                            | .. | .. | 96 07 52.7                   | Ditto.                                                                                                     |
| 21  | 39                               | 4,936  | "                            | .. | .. | 96 09 11.9                   | Ditto.                                                                                                     |
| 22  | 40                               | 4,936  | "                            | .. | .. | 96 10 31.1                   | Ditto.                                                                                                     |
| 23  | 41                               | 4,936  | "                            | .. | .. | 96 11 50.2                   | Ditto.                                                                                                     |
| 24  | 42                               | 5,519  | Iron pillar                  | .. | .. | 96 13 15.2                   |                                                                                                            |
| 25  | 43                               | 4,936  | Earth mound, 10 ft. by 6 ft. | .. | .. | 96 14 28.5                   |                                                                                                            |
| 26  | 44                               | 5,519  | Iron pillar                  | .. | .. | 96 15 53.6                   |                                                                                                            |
| 27  | 45                               | 4,936  | Earth mound, 10 ft. by 6 ft. | .. | .. | 96 17 06.9                   |                                                                                                            |
| 28  | 46                               | 5,519  | Iron pillar                  | .. | .. | 96 18 31.9                   |                                                                                                            |
| 29  | 47                               | 4,936  | Earth mound, 10 ft. by 6 ft. | .. | .. | 96 19 45.3                   |                                                                                                            |
| 30  | 48                               | 5,519  | Iron pillar                  | .. | .. | 96 21 10.3                   | Near 40 mile station.                                                                                      |
| 31  | 49                               | 4,936  | Earth mound, 10 ft. by 6 ft. | .. | .. | 96 22 23.6                   |                                                                                                            |
| 32  | 50                               | 5,519  | Iron pillar                  | .. | .. | 96 23 48.6                   |                                                                                                            |
| 33  | 51                               | 4,936  | Earth mound, 10 ft. by 6 ft. | .. | .. | 96 25 02.0                   |                                                                                                            |
| 34  | 52                               | 5,519  | Iron pillar                  | .. | .. | 96 26 27.0                   |                                                                                                            |
| 35  | 53                               | 4,936  | Earth mound, 10 ft. by 6 ft. | .. | .. | 96 27 40.3                   |                                                                                                            |
| 36  | 54                               | 5,519  | Iron pillar                  | .. | .. | 96 29 05.3                   | East of Pointe d'Orme.                                                                                     |
| 37  | 55                               | 5,519  | "                            | .. | .. | 96 30 24.5                   | West of Pointe d'Orme. Between 37 and 38 the Roseau River, at Pointe d'Orme, crosses the line three times. |
| 38  | 56                               | 5,519  | "                            | .. | .. | 96 31 43.7                   |                                                                                                            |
| 39  | 57                               | 5,519  | "                            | .. | .. | 96 33 02.8                   |                                                                                                            |

| No. | Distance<br>from Lake of<br>the Woods. |        | Nature of Monument. |    |    | Longitude<br>West of<br>Greenwich. | Remarks.                        |
|-----|----------------------------------------|--------|---------------------|----|----|------------------------------------|---------------------------------|
|     | Miles.                                 | Links. |                     |    |    | ° ' "                              |                                 |
| 40  | 58                                     | 5,519  | Iron pillar         | .. | .. | 96 34 22.0                         |                                 |
| 41  | 59                                     | 5,519  | "                   | .. | .. | 96 35 41.2                         |                                 |
| 42  | 60                                     | 5,519  | "                   | .. | .. | 96 37 00.4                         |                                 |
| 43  | 61                                     | 5,519  | "                   | .. | .. | 96 38 19.5                         |                                 |
| 44  | 62                                     | 5,519  | "                   | .. | .. | 96 39 38.7                         |                                 |
| 45  | 63                                     | 5,519  | "                   | .. | .. | 96 40 57.9                         |                                 |
| 46  | 64                                     | 5,519  | "                   | .. | .. | 96 42 17.1                         |                                 |
| 47  | 65                                     | 5,519  | "                   | .. | .. | 96 43 36.2                         |                                 |
| 48  | 66                                     | 5,519  | "                   | .. | .. | 96 44 55.4                         |                                 |
| 49  | 67                                     | 5,519  | "                   | .. | .. | 96 46 14.6                         | East of Roseau Ridge.           |
| 50  | 68                                     | 5,519  | "                   | .. | .. | 96 47 33.8                         | West of Roseau Ridge.           |
| 51  | 69                                     | 5,519  | "                   | .. | .. | 96 48 52.9                         |                                 |
| 52  | 70                                     | 5,519  | "                   | .. | .. | 96 50 12.1                         |                                 |
| 53  | 71                                     | 5,519  | "                   | .. | .. | 96 51 31.3                         |                                 |
| 54  | 72                                     | 5,519  | "                   | .. | .. | 96 52 50.5                         |                                 |
| 55  | 73                                     | 5,519  | "                   | .. | .. | 96 54 09.6                         |                                 |
| 56  | 74                                     | 5,519  | "                   | .. | .. | 96 55 28.8                         |                                 |
| 57  | 75                                     | 5,519  | "                   | .. | .. | 96 56 48                           |                                 |
| 58  | 76                                     | 5,519  | "                   | .. | .. | 96 58 07.2                         |                                 |
| 59  | 77                                     | 5,519  | "                   | .. | .. | 96 59 26.3                         |                                 |
| 60  | 78                                     | 5,519  | "                   | .. | .. | 97 00 45.5                         |                                 |
| 61  | 79                                     | 5,519  | "                   | .. | .. | 97 02 04.7                         |                                 |
| 62  | 80                                     | 5,519  | "                   | .. | .. | 97 03 23.9                         |                                 |
| 63  | 81                                     | 5,519  | "                   | .. | .. | 97 04 43                           |                                 |
| 64  | 82                                     | 5,519  | "                   | .. | .. | 97 06 02.2                         |                                 |
| 65  | 83                                     | 5,519  | "                   | .. | .. | 97 07 21.4                         |                                 |
| 66  | 84                                     | 5,519  | "                   | .. | .. | 97 08 40.6                         | West bank of Joe River.         |
| 67  | 85                                     | 5,519  | "                   | .. | .. | 97 09 59.7                         |                                 |
| 68  | 86                                     | 5,519  | "                   | .. | .. | 97 11 18.9                         |                                 |
| 69  | 87                                     | 5,519  | "                   | .. | .. | 97 12 38.1                         | East of Red River.              |
| 70  | 88                                     | 4,986  | "                   | .. | .. | 97 13 51.5                         | Red River Astronomical Station. |
| 71  | 88                                     | 5,519  | "                   | .. | .. | 97 13 57.3                         |                                 |
| 72  | 89                                     | 5,519  | "                   | .. | .. | 97 15 16.4                         |                                 |
| 73  | 90                                     | 5,519  | "                   | .. | .. | 97 16 35.6                         |                                 |
| 74  | 91                                     | 5,519  | "                   | .. | .. | 97 17 54.8                         |                                 |
| 75  | 92                                     | 5,519  | "                   | .. | .. | 97 19 14.0                         |                                 |
| 76  | 93                                     | 5,519  | "                   | .. | .. | 97 20 33.1                         |                                 |
| 77  | 94                                     | 5,519  | "                   | .. | .. | 97 21 52.3                         |                                 |
| 78  | 95                                     | 5,519  | "                   | .. | .. | 97 23 11.5                         | Marais River.                   |
| 79  | 96                                     | 5,519  | "                   | .. | .. | 97 24 30.7                         |                                 |
| 80  | 97                                     | 5,519  | "                   | .. | .. | 97 25 49.8                         |                                 |
| 81  | 98                                     | 5,519  | "                   | .. | .. | 97 27 09                           | Manitoba principal Meridian.    |
| 82  | 99                                     | 5,519  | "                   | .. | .. | 97 28 28.2                         |                                 |
| 83  | 100                                    | 5,519  | "                   | .. | .. | 97 29 47.4                         |                                 |
| 84  | 101                                    | 5,519  | "                   | .. | .. | 97 31 06.5                         |                                 |
| 85  | 102                                    | 5,519  | "                   | .. | .. | 97 32 25.7                         |                                 |
| 86  | 103                                    | 5,519  | "                   | .. | .. | 97 33 44.9                         |                                 |
| 87  | 104                                    | 5,519  | "                   | .. | .. | 97 35 04.1                         |                                 |
| 88  | 105                                    | 5,519  | "                   | .. | .. | 97 36 23.2                         |                                 |
| 89  | 106                                    | 5,519  | "                   | .. | .. | 97 37 42.4                         |                                 |
| 90  | 107                                    | 5,519  | "                   | .. | .. | 97 39 01.6                         |                                 |
| 91  | 108                                    | 5,519  | "                   | .. | .. | 97 40 20.8                         | Grants, or Pointe Michel.       |
| 92  | 109                                    | 5,519  | "                   | .. | .. | 97 41 39.9                         |                                 |
| 93  | 110                                    | 5,519  | "                   | .. | .. | 97 42 59.1                         |                                 |
| 94  | 111                                    | 5,519  | "                   | .. | .. | 97 44 18.3                         |                                 |
| 95  | 112                                    | 5,519  | "                   | .. | .. | 97 45 37.5                         |                                 |
| 96  | 113                                    | 5,519  | "                   | .. | .. | 97 46 56.6                         |                                 |
| 97  | 114                                    | 6,319  | "                   | .. | .. | 97 48 23.7                         |                                 |
| 98  | 115                                    | 5,519  | "                   | .. | .. | 97 49 35.0                         |                                 |
| 99  | 116                                    | 5,519  | "                   | .. | .. | 97 50 54.1                         |                                 |
| 100 | 117                                    | 5,519  | "                   | .. | .. | 97 52 13.3                         |                                 |
| 101 | 118                                    | 5,519  | "                   | .. | .. | 97 53 32.5                         |                                 |
| 102 | 119                                    | 5,519  | "                   | .. | .. | 97 54 51.7                         |                                 |
| 103 | 120                                    | 5,519  | "                   | .. | .. | 97 56 10.9                         |                                 |
| 104 | 121                                    | 5,519  | "                   | .. | .. | 97 57 30                           |                                 |
| 105 | 122                                    | 5,519  | "                   | .. | .. | 97 58 49.2                         |                                 |
| 106 | 123                                    | 5,519  | "                   | .. | .. | 98 00 08.4                         | Base of Pembina Mountain.       |
| 107 | 124                                    | 5,519  | "                   | .. | .. | 98 01 27.6                         |                                 |
| 108 | 125                                    | 5,519  | "                   | .. | .. | 98 02 46.7                         |                                 |
| 109 | 126                                    | 5,519  | "                   | .. | .. | 98 04 05.9                         |                                 |
| 110 | 127                                    | 5,519  | "                   | .. | .. | 98 05 25.1                         |                                 |
| 111 | 128                                    | 5,519  | "                   | .. | .. | 98 06 44.3                         |                                 |
| 112 | 129                                    | 5,519  | "                   | .. | .. | 98 08 03.4                         |                                 |
| 113 | 130                                    | 5,519  | "                   | .. | .. | 98 09 22.6                         |                                 |
| 114 | 131                                    | 5,519  | "                   | .. | .. | 98 10 41.8                         |                                 |



| No. | Distance<br>from Lake of<br>the Woods. |        | Nature of Monument. |    |    |    | Longitude<br>West of<br>Greenwich. | Remarks.                                            |
|-----|----------------------------------------|--------|---------------------|----|----|----|------------------------------------|-----------------------------------------------------|
|     | Miles.                                 | Links. |                     |    |    |    | ° ' "                              |                                                     |
| 115 | 132                                    | 6,065  | Iron pillar         | .. | .. | .. | 98 12 06.5                         | Near west bank of Pembina River.                    |
| 116 | 133                                    | 2,307  | "                   | .. | .. | .. | 98 14 07.5                         | Top of ridge west of Pembina River.                 |
| 117 | 134                                    | 5,519  | "                   | .. | .. | .. | 98 14 39.3                         |                                                     |
| 118 | 135                                    | 5,519  | "                   | .. | .. | .. | 98 15 58.5                         | Near United States' Astronomical Station, No. 4.    |
| 119 | 136                                    | 5,519  | "                   | .. | .. | .. | 98 17 17.6                         |                                                     |
| 120 | 137                                    | 5,519  | "                   | .. | .. | .. | 98 18 36.8                         |                                                     |
| 121 | 138                                    | 5,519  | "                   | .. | .. | .. | 98 19 56.0                         |                                                     |
| 122 | 139                                    | 5,519  | "                   | .. | .. | .. | 98 21 15.2                         |                                                     |
| 123 | 140                                    | 5,519  | "                   | .. | .. | .. | 98 22 34.4                         |                                                     |
| 124 | 141                                    | 5,519  | "                   | .. | .. | .. | 98 23 53.5                         |                                                     |
| 125 | 142                                    | 5,519  | "                   | .. | .. | .. | 98 25 12.7                         |                                                     |
| 126 | 143                                    | 5,519  | "                   | .. | .. | .. | 98 26 31.9                         |                                                     |
| 127 | 144                                    | 5,519  | "                   | .. | .. | .. | 98 27 51.1                         |                                                     |
| 128 | 145                                    | 5,519  | "                   | .. | .. | .. | 98 29 10.2                         |                                                     |
| 129 | 146                                    | 5,519  | "                   | .. | .. | .. | 98 30 29.4                         |                                                     |
| 130 | 147                                    | 5,519  | "                   | .. | .. | .. | 98 31 48.6                         |                                                     |
| 131 | 148                                    | 5,519  | "                   | .. | .. | .. | 98 33 07.8                         |                                                     |
| 132 | 149                                    | 5,519  | "                   | .. | .. | .. | 98 34 26.9                         | East bank of large Coulé.                           |
| 133 | 150                                    | 5,519  | "                   | .. | .. | .. | 98 35 46.1                         |                                                     |
| 134 | 151                                    | 5,519  | "                   | .. | .. | .. | 98 37 05.3                         |                                                     |
| 135 | 152                                    | 5,519  | "                   | .. | .. | .. | 98 38 24.5                         |                                                     |
| 136 | 153                                    | 5,519  | "                   | .. | .. | .. | 98 39 43.6                         | Near Coulé, east bank.                              |
| 137 | 154                                    | 5,519  | "                   | .. | .. | .. | 98 41 02.8                         |                                                     |
| 138 | 155                                    | 5,519  | "                   | .. | .. | .. | 98 42 22.0                         |                                                     |
| 139 | 156                                    | 5,519  | "                   | .. | .. | .. | 98 43 41.1                         |                                                     |
| 140 | 157                                    | 5,519  | "                   | .. | .. | .. | 98 45 00.3                         |                                                     |
| 141 | 158                                    | 5,519  | "                   | .. | .. | .. | 98 46 19.5                         | Near crossing of Half-Breed trail.                  |
| 142 | 159                                    | 5,519  | "                   | .. | .. | .. | 98 47 38.7                         |                                                     |
| 143 | 160                                    | 5,519  | "                   | .. | .. | .. | 98 48 57.9                         |                                                     |
| 144 | 161                                    | 5,519  | "                   | .. | .. | .. | 98 50 17                           |                                                     |
| 145 | 162                                    | 5,519  | "                   | .. | .. | .. | 98 51 36.2                         |                                                     |
| 146 | 163                                    | 5,519  | "                   | .. | .. | .. | 98 52 55.4                         |                                                     |
| 147 | 164                                    | 5,519  | "                   | .. | .. | .. | 98 54 14.6                         |                                                     |
| 148 | 165                                    | 5,519  | "                   | .. | .. | .. | 98 55 33.7                         |                                                     |
| 149 | 166                                    | 5,519  | "                   | .. | .. | .. | 98 56 52.9                         |                                                     |
| 150 | 167                                    | 5,519  | "                   | .. | .. | .. | 98 58 12.1                         |                                                     |
| 151 | 168                                    | 5,519  | "                   | .. | .. | .. | 98 59 31.3                         |                                                     |
| 152 | 169                                    | 420    | "                   | .. | .. | .. | 99 00 00                           | Western boundary of Manitoba.                       |
| 153 | 169                                    | 5,519  | "                   | .. | .. | .. | 99 00 50.4                         |                                                     |
| 154 | 170                                    | 5,519  | "                   | .. | .. | .. | 99 02 09.6                         |                                                     |
| 155 | 170                                    | 6,998  | Stone cairn,        | 13 | 7* | .. | 99 02 24.2                         |                                                     |
| 156 | 172                                    | 7,154  | "                   | 13 | 7* | .. | 99 05 04.2                         |                                                     |
| 157 | 175                                    | 7,662  | "                   | 13 | 7* | .. | 99 09 06.7                         |                                                     |
| 158 | 176                                    | 5,485  | "                   | 10 | 6* | .. | 99 10 04.3                         |                                                     |
| 159 | 178                                    | 6,527  | Earth mound,        | 16 | 7* | .. | 99 12 53                           |                                                     |
| 160 | 180                                    | 7,412  | "                   | 16 | 7* | .. | 99 15 40.1                         |                                                     |
| 161 | 183                                    | 1,414  | "                   | 10 | 5* | .. | 99 18 38.3                         |                                                     |
| 162 | 183                                    | 3,911  | "                   | 9  | 6* | .. | 99 19 03                           | Sleepy Hollow Astronomical Station.                 |
| 163 | 186                                    | 3,911  | "                   | 9  | 6* | .. | 99 23 00.5                         |                                                     |
| 164 | 189                                    | 1,228  | "                   | 9  | 6* | .. | 99 26 31.5                         |                                                     |
| 165 | 191                                    | 5,717  | "                   | 9  | 6* | .. | 99 29 54.2                         |                                                     |
| 166 | 195                                    | 1,272  | "                   | 9  | 6* | .. | 99 34 27                           |                                                     |
| 167 | 198                                    | 3,911  | "                   | 9  | 6* | .. | 99 38 50.6                         |                                                     |
| 168 | 201                                    | 7,911  | "                   | 9  | 6* | .. | 99 43 27.7                         |                                                     |
| 169 | 203                                    | 7,729  | "                   | 14 | 6* | .. | 99 46 04.2                         | Turtle Mountain East Astronomical Station.          |
| 170 | 206                                    | 7,729  | "                   | 14 | 6* | .. | 99 50 01.8                         |                                                     |
| 171 | 209                                    | 5,582  | "                   | 14 | 6* | .. | 99 53 38                           |                                                     |
| 172 | 212                                    | 7,729  | "                   | 14 | 6* | .. | 99 57 56.8                         |                                                     |
| 173 | 215                                    | 1,996  | "                   | 14 | 6* | .. | 100 00 57.6                        |                                                     |
| 174 | 218                                    | 7,729  | "                   | 14 | 6* | .. | 100 05 51.9                        |                                                     |
| 175 | 221                                    | 7,248  | "                   | 14 | 6* | .. | 100 09 44.6                        |                                                     |
| 176 | 224                                    | 7,729  | "                   | 14 | 6* | .. | 100 13 46.9                        |                                                     |
| 177 | 227                                    | 6,470  | "                   | 14 | 6* | .. | 100 17 32                          |                                                     |
| 178 | 229                                    | 7,245  | "                   | 14 | 6  | .. | 100 20 18                          | East shore of Boundary Lake.                        |
| 179 | 233                                    | 3,787  | "                   | 9  | 6* | .. | 100 25 05.5                        | High ridge east of Summit Lake.                     |
| 180 | 235                                    | 2,660  | "                   | 9  | 6* | .. | 100 27 27.7                        | On slope of Turtle Mountain, and outside of timber. |
| 181 | 237                                    | 6,968  | Stone cairn,        | 16 | 7* | .. | 100 30 48.7                        | East of Turtle Mountain, West Astronomical Station. |
| 182 | 243                                    | 1,114  | "                   | 16 | 7* | .. | 100 37 45.8                        |                                                     |
| 183 | 247                                    | 649    | "                   | 16 | 7* | .. | 100 42 57.9                        |                                                     |

| No. | Distance<br>from Lake of<br>the Woods. |        | Nature of Monument. |         |    | Longitude<br>West of<br>Greenwich. |    |      | Remarks.                                                                |
|-----|----------------------------------------|--------|---------------------|---------|----|------------------------------------|----|------|-------------------------------------------------------------------------|
|     | Miles.                                 | Links. |                     | Ft. Ft. |    | °                                  | '  | "    |                                                                         |
| 184 | 249                                    | 3,036  | Stone cairn,        | 16 × 7* | .. | 100                                | 45 | 59.9 |                                                                         |
| 185 | 252                                    | 5,896  | "                   | 16 7*   | .. | 100                                | 50 | 25.7 |                                                                         |
| 186 | 255                                    | 2,940  | Earth mound,        | 8 5*    | .. | 100                                | 53 | 54   |                                                                         |
| 187 | 256                                    | 3,880  | Stone,              | 16 7*   | .. | 100                                | 55 | 22.4 |                                                                         |
| 188 | 258                                    | 744    | Earth mound,        | 5 8*    | .. | 100                                | 57 | 29.8 | First crossing of Mouse River<br>on west bank, Astronomical<br>Station. |
| 189 | 261                                    | 744    | "                   | 5 8*    | .. | 101                                | 01 | 27.3 |                                                                         |
| 190 | 264                                    | 744    | "                   | 5 8*    | .. | 101                                | 05 | 24.8 |                                                                         |
| 191 | 267                                    | 744    | "                   | 5 8*    | .. | 101                                | 09 | 22.3 |                                                                         |
| 192 | 270                                    | 744    | "                   | 5 8*    | .. | 101                                | 13 | 19.9 | Right bank of South Antler<br>Creek.                                    |
| 193 | 273                                    | 744    | "                   | 5 8*    | .. | 101                                | 17 | 17.4 | Left ditto.                                                             |
| 194 | 276                                    | 744    | "                   | 5 8*    | .. | 101                                | 21 | 14.9 |                                                                         |
| 195 | 279                                    | 744    | "                   | 5 8*    | .. | 101                                | 25 | 12.4 |                                                                         |
| 196 | 281                                    | 1,973  | Stone cairn,        | 10 5*   | .. | 101                                | 28 | 02.9 | On prairie, near South Antler<br>Creek.                                 |
| 197 | 283                                    | 3,146  | "                   | 15 6*   | .. | 101                                | 30 | 52.9 |                                                                         |
| 198 | 286                                    | 448    | "                   | 15 6*   | .. | 101                                | 34 | 23.7 |                                                                         |
| 199 | 288                                    | 5,976  | Earth mound,        | 15 6*   | .. | 101                                | 37 | 56.8 |                                                                         |
| 200 | 291                                    | 514    | Stone cairn,        | 15 6*   | .. | 101                                | 41 | 00.2 |                                                                         |
| 201 | 294                                    | 7,699  | Earth mound,        | 12 6*   | .. | 101                                | 46 | 08.9 |                                                                         |
| 202 | 297                                    | 2,521  | "                   | 12 6*   | .. | 101                                | 49 | 15.1 |                                                                         |
| 203 | 300                                    | 1,250  | Stone cairn,        | 12 6*   | .. | 101                                | 53 | 00.1 |                                                                         |
| 204 | 301                                    | 5,152  | "                   | 12 6*   | .. | 101                                | 54 | 57.9 | East bank of Mouse River, near<br>road.                                 |
| 205 | 303                                    | 7,150  | Earth mound,        | 5 8*    | .. | 101                                | 57 | 56   | Second crossing of Mouse River,<br>Astronomical Station.                |
| 206 | 306                                    | 7,150  | "                   | 5 8*    | .. | 102                                | 01 | 53.6 |                                                                         |
| 207 | 309                                    | 7,150  | "                   | 5 8*    | .. | 102                                | 05 | 51.1 |                                                                         |
| 208 | 312                                    | 7,678  | "                   | 5 8*    | .. | 102                                | 09 | 53.8 | East of Rivière des Lacs.                                               |
| 209 | 315                                    | 7,150  | "                   | 5 8*    | .. | 102                                | 13 | 46.1 | West of ditto.                                                          |
| 210 | 319                                    | 398    | "                   | 5 8*    | .. | 102                                | 17 | 56   |                                                                         |
| 211 | 321                                    | 7,150  | "                   | 5 8*    | .. | 102                                | 21 | 41.2 |                                                                         |
| 212 | 325                                    | 3,846  | "                   | 14 6*   | .. | 102                                | 26 | 25.2 | Astronomical Station.                                                   |
| 213 | 329                                    | 7,294  | Stone cairn,        | 8 6*    | .. | 102                                | 32 | 16   |                                                                         |
| 214 | 331                                    | 5,986  | Earth mound,        | 14 6*   | .. | 102                                | 34 | 41.4 |                                                                         |
| 215 | 334                                    | 5,167  | Stone,              | 8 6*    | .. | 102                                | 38 | 30.8 |                                                                         |
| 216 | 337                                    | 1,260  | Earth mound,        | 10 5*   | .. | 102                                | 41 | 49.7 |                                                                         |
| 217 | 340                                    | 1,291  | Stone,              | 10 5*   | .. | 102                                | 45 | 47.5 | East bank of Coulé.                                                     |
| 218 | 342                                    | 2,814  | Earth mound,        | 13 6*   | .. | 102                                | 48 | 40.9 | East bank of Short Creek.                                               |
| 219 | 343                                    | 2,892  | "                   | 9 6*    | .. | 102                                | 50 | 00.9 | British Astronomical Station,<br>Short Creek west branch.               |
| 220 | 346                                    | 472    | "                   | 12 6*   | .. | 102                                | 53 | 34.4 |                                                                         |
| 221 | 349                                    | 2,410  | "                   | 12 6*   | .. | 102                                | 57 | 51.1 |                                                                         |
| 222 | 352                                    | 4,392  | "                   | 12 6*   | .. | 103                                | 02 | 08.3 | Near Half-breed Road, east bank<br>of Mouse River.                      |
| 223 | 356                                    | 770    | "                   | 12 6*   | .. | 103                                | 06 | 49.1 | West of Mouse River.                                                    |
| 224 | 359                                    | 3,254  | Stone,              | 12 5*   | .. | 103                                | 11 | 11.2 | Third Mouse Astronomical<br>Station.                                    |
| 225 | 361                                    | 7,908  | Earth mound,        | 18 8*   | .. | 103                                | 14 | 35.7 |                                                                         |
| 226 | 364                                    | 3,666  | "                   | 18 8*   | .. | 103                                | 17 | 51.2 | East of Mouse River.                                                    |
| 227 | 369                                    | 336    | "                   | 16 6*   | .. | 103                                | 23 | 54.1 | West of Mouse River.                                                    |
| 228 | 372                                    | 4,136  | "                   | 16 6*   | .. | 103                                | 28 | 29.3 |                                                                         |
| 229 | 374                                    | 5,825  | Stone,              | 12 7*   | .. | 103                                | 31 | 24.3 |                                                                         |
| 230 | 377                                    | 2,977  | Earth mound,        | 12 6*   | .. | 103                                | 34 | 53.7 | Grand Coteau. Astronomical<br>Station base of Coteau.                   |
| 231 | 379                                    | 7,417  | "                   | 12 6    | .. | 103                                | 38 | 16   |                                                                         |
| 232 | 382                                    | 4,013  | "                   | 12 6    | .. | 103                                | 41 | 39.8 |                                                                         |
| 233 | 385                                    | 1,896  | "                   | 12 6    | .. | 103                                | 45 | 16.4 |                                                                         |
| 234 | 388                                    | 6,377  | "                   | 12 6    | .. | 103                                | 49 | 58.2 |                                                                         |
| 235 | 392                                    | 4,139  | "                   | 12 6    | .. | 103                                | 54 | 52.8 |                                                                         |
| 236 | 395                                    | 4,462  | "                   | 12 6    | .. | 103                                | 58 | 53.5 |                                                                         |
| 237 | 398                                    | 6,241  | "                   | 12 6    | .. | 104                                | 03 | 08.6 |                                                                         |
| 238 | 400                                    | 4,925  | "                   | 10 5    | .. | 104                                | 05 | 34   | Mid Coteau Astronomical Station.                                        |
| 239 | 403                                    | 2,392  | "                   | 10 5    | .. | 104                                | 09 | 06.4 |                                                                         |
| 240 | 405                                    | 5,407  | Stone,              | 10 5    | .. | 104                                | 12 | 14.6 |                                                                         |
| 241 | 407                                    | 6,966  | "                   | 10 5    | .. | 104                                | 15 | 08.4 | East side of Large Coulé.                                               |
| 242 | 410                                    | 4,899  | Earth,              | 10 5    | .. | 104                                | 18 | 45.5 | West side of Large Coulé.                                               |
| 243 | 413                                    | 3,675  | "                   | 10 5    | .. | 104                                | 22 | 30.9 |                                                                         |
| 244 | 417                                    | 2,411  | "                   | 10 5    | .. | 104                                | 27 | 35   |                                                                         |
| 245 | 421                                    | 2,177  | Stone,              | 10 5    | .. | 104                                | 32 | 49.4 |                                                                         |
| 246 | 424                                    | 941    | "                   | 10 5    | .. | 104                                | 36 | 34.7 |                                                                         |
| 247 | 426                                    | 5,035  | Earth,              | 14 6    | .. | 104                                | 39 | 53.6 | Big Muddy Astronomical Station.                                         |
| 248 | 429                                    | 4,938  | "                   | 14 6    | .. | 104                                | 43 | 50.2 |                                                                         |



| No. | Distance<br>from Lake of<br>the Woods. |        | Nature of Monument. |        | Longitude<br>West of<br>Greenwich. | Remarks.                                                     |
|-----|----------------------------------------|--------|---------------------|--------|------------------------------------|--------------------------------------------------------------|
|     | Miles.                                 | Links. | Ft.                 | Ft.    | " "                                |                                                              |
| 249 | 432                                    | 1,370  | Earth mound, 14 × 6 |        | 104 47 12.4                        | East of Pyramid Creek.                                       |
| 250 | 435                                    | 3,035  | "                   | 14 6   | 104 51 26.4                        | On west bluff of Pyramid Creek.                              |
| 251 | 437                                    | 1,489  | "                   | 14 6   | 104 53 49.4                        |                                                              |
| 252 | 440                                    | 7,152  | "                   | 14 6   | 104 58 43                          | East of Big Muddy River.                                     |
| 253 | 444                                    | 5,081  | "                   | 14 6   | 105 03 39.2                        | West of Big Muddy River.                                     |
| 254 | 447                                    | 5,311  | Stone,              | 12 6   | 105 07 39                          |                                                              |
| 255 | 451                                    | 1,841  | "                   | 10 5   | 105 12 21.4                        | Bully Spring, United States<br>Astronomical Station, No. 11. |
| 256 | 451                                    | 4,321  | "                   | 10 5   | 105 12 45.9                        |                                                              |
| 257 | 454                                    | 4,541  | Earth mound, 10 5   |        | 105 16 45.6                        |                                                              |
| 258 | 457                                    | 5,874  | "                   | 10 5   | 105 20 56.3                        |                                                              |
| 259 | 460                                    | 5,841  | "                   | 10 5   | 105 24 53.5                        | In a broad valley.                                           |
| 260 | 464                                    | 4,632  | "                   | 10 5   | 105 29 58.3                        |                                                              |
| 261 | 467                                    | 4,826  | "                   | 10 5   | 105 33 57.7                        |                                                              |
| 262 | 472                                    | 732    | "                   | 10 5   | 105 39 53.1                        | In valley of Poplar River.                                   |
| 263 | 473                                    | 3,454  | "                   | 14 6   | 105 41 39.2                        | Poplar River Astronomical<br>Station.                        |
| 264 | 476                                    | 3,454  | "                   | 14 6   | 105 45 36.7                        |                                                              |
| 265 | 479                                    | 3,332  | "                   | 14 6   | 105 49 33                          |                                                              |
| 266 | 482                                    | 3,454  | "                   | 14 6   | 105 53 31.8                        |                                                              |
| 267 | 485                                    | 3,454  | "                   | 14 6   | 105 57 29.3                        |                                                              |
| 268 | 488                                    | 3,454  | "                   | 14 6   | 106 01 26.8                        |                                                              |
| 269 | 491                                    | 2,054  | "                   | 14 6   | 106 05 10.5                        |                                                              |
| 270 | 494                                    | 3,454  | "                   | 14 6   | 106 09 21.8                        |                                                              |
| 271 | 496                                    | 6,906  | Stone,              | 15 6*  | 106 12 34.3                        | West Poplar River Astronomical<br>Station.                   |
| 272 | 498                                    | 6,821  | Earth mound, 12 7*  |        | 106 15 11.9                        |                                                              |
| 273 | 501                                    | 1,299  | "                   | 12 7*  | 106 18 14.7                        |                                                              |
| 274 | 502                                    | 7,391  | "                   | 12 7*  | 106 20 34.2                        | On edge of west branch of Poplar<br>River.                   |
| 275 | 505                                    | 356    | "                   | 12 7*  | 106 23 22.1                        |                                                              |
| 276 | 510                                    | 170    | "                   | 12 7*  | 106 29 56.1                        |                                                              |
| 277 | 511                                    | 1,061  | Stone,              | 10 6*  | 106 31 24.1                        |                                                              |
| 278 | 514                                    | 1,239  | "                   | 10 6*  | 106 35 23.4                        |                                                              |
| 279 | 518                                    | 3,641  | Earth mound, 12 7*  |        | 106 41 03.9                        |                                                              |
| 280 | 520                                    | 7,605  | Stone,              | 10 6*  | 106 44 21.5                        | East of Little Rocky Creek.                                  |
| 281 | 522                                    | 4,742  | Earth mound, 14 6*  |        | 106 46 31.5                        | Little Rocky Creek Astronomical<br>Station, west of Creek.   |
| 282 | 525                                    | 3,103  | Stone,              | 10 6*  | 106 50 12.8                        |                                                              |
| 283 | 528                                    | 764    | "                   | 10 6*  | 106 53 47.2                        |                                                              |
| 284 | 531                                    | 2,323  | "                   | 10 6*  | 106 58 00.1                        |                                                              |
| 285 | 534                                    | 7,642  | "                   | 10 6*  | 107 02 50.3                        |                                                              |
| 286 | 537                                    | 1,010  | "                   | 10 6*  | 107 05 42.2                        |                                                              |
| 287 | 541                                    | 7,704  | "                   | 10 6*  | 107 12 05.1                        | On east bluff of Frenchman's<br>Creek.                       |
| 288 | 544                                    | 7,513  | Earth mound, 12 6*  |        | 107 16 00.8                        |                                                              |
| 289 | 548                                    | 3,375  | Stone,              | 10 6*  | 107 20 36.5                        | On west bluff of Frenchman's<br>Creek.                       |
| 290 | 550                                    | 6,740  | "                   | 10 6*  | 107 23 48.2                        | Frenchman's Creek Astronomical<br>Station.                   |
| 291 | 553                                    | 1,607  | "                   | 10 6*  | 107 26 54.9                        | Near Lake.                                                   |
| 292 | 557                                    | 2,460  | "                   | 10 6*  | 107 32 20                          |                                                              |
| 293 | 560                                    | 3,708  | "                   | 10 6*  | 107 36 29.9                        |                                                              |
| 294 | 563                                    | 2,270  | "                   | 10 6*  | 107 40 13.2                        |                                                              |
| 295 | 565                                    | 2,322  | "                   | 10 6*  | 107 42 52.1                        |                                                              |
| 296 | 567                                    | 3,881  | "                   | 12 6*  | 107 45 45.8                        | Cottonwood Coule Astronomical<br>Station.                    |
| 297 | 570                                    | 3,881  | "                   | 12 6*† | 107 49 43.4                        |                                                              |
| 298 | 573                                    | 3,881  | "                   | 10 6*  | 107 53 40.9                        |                                                              |
| 299 | 576                                    | 3,881  | "                   | 10 6*† | 107 57 38.4                        | On west bank of Cottonwood<br>Coule.                         |
| 300 | 579                                    | 3,881  | "                   | 10 6*  | 108 01 35.9                        |                                                              |
| 301 | 582                                    | 3,881  | "                   | 10 6*† | 108 05 33.5                        |                                                              |
| 302 | 585                                    | 3,881  | "                   | 10 6*† | 108 09 31                          |                                                              |
| 303 | 588                                    | 1,931  | "                   | 10 6*  | 108 13 09.2                        | Pool on Prairie, Astronomical<br>Station.                    |
| 304 | 591                                    | 6,187  | "                   | 10 6*  | 108 17 48.8                        |                                                              |
| 305 | 596                                    | 5,787  | "                   | 10 6*  | 108 24 20.8                        |                                                              |
| 306 | 599                                    | 228    | "                   | 10 6*  | 108 27 23.3                        |                                                              |
| 307 | 601                                    | 2,182  | "                   | 10 6*  | 108 30 21                          |                                                              |
| 308 | 615                                    | 6,789  | "                   | 10 6*  | 108 36 23.3                        |                                                              |
| 309 | 608                                    | 6,593  | "                   | 10 6*  | 108 40 18.9                        |                                                              |
| 310 | 613                                    | 378    | "                   | 10 6*  | 108 45 53.2                        |                                                              |
| 311 | 615                                    | 3,202  | "                   | 12 6*  | 108 48 59.5                        | Near Goose Lake, Astronomical<br>Station.                    |

| No. | Distance<br>from Lake of<br>the Woods. |        | Nature of Monument.      |     |     | Longitude<br>West of<br>Greenwich. |    |      | Remarks.                                                         |
|-----|----------------------------------------|--------|--------------------------|-----|-----|------------------------------------|----|------|------------------------------------------------------------------|
|     | Miles.                                 | Links. |                          | Ft. | Ft. | °                                  | '  | "    |                                                                  |
| 312 | 618                                    | 3,202  | Stone,                   | 10  | 6*  | 108                                | 52 | 57   |                                                                  |
| 313 | 621                                    | 1,085  | "                        | 10  | 6*  | 108                                | 56 | 38.6 |                                                                  |
| 314 | 624                                    | 2,737  | "                        | 10  | 6*  | 109                                | 00 | 47.5 |                                                                  |
| 315 | 627                                    | 571    | "                        | 10  | 6*  | 109                                | 04 | 23.6 |                                                                  |
| 316 | 630                                    | 4,402  | "                        | 10  | 6*  | 109                                | 08 | 59   |                                                                  |
| 317 | 632                                    | 4,005  | "                        | 10  | 6*  | 109                                | 11 | 33.4 |                                                                  |
| 318 | 635                                    | 4,459  | Stone and<br>earth mound | 10  | 6*  | 109                                | 15 | 35.5 |                                                                  |
| 319 | 639                                    | 4,147  | Stone,                   | 10  | 6*  | 109                                | 20 | 49.1 |                                                                  |
| 320 | 642                                    | 218    | "                        | 10  | 6*  | 109                                | 24 | 07.7 | East Fork, Astronomical Station<br>in river bottom.              |
| 321 | 643                                    | 6,856  | "                        | 10  | 6*  | 109                                | 26 | 32.6 |                                                                  |
| 322 | 646                                    | 2,395  | "                        | 10  | 6*  | 109                                | 29 | 46   |                                                                  |
| 323 | 649                                    | 2,001  | "                        | 10  | 6*  | 109                                | 33 | 39.6 |                                                                  |
| 324 | 651                                    | 1,113  | Earth mound,             | 12  | 7*  | 109                                | 36 | 09.2 |                                                                  |
| 325 | 655                                    | 2,357  | Stone,                   | 10  | 6*† | 109                                | 41 | 38.2 | West Fork, Astronomical Station<br>in river bottom.              |
| 326 | 658                                    | 2,357  | "                        | 10  | 6*† | 109                                | 45 | 35.7 |                                                                  |
| 327 | 661                                    | 2,357  | "                        | 10  | 6*† | 109                                | 49 | 33.2 |                                                                  |
| 328 | 664                                    | 2,357  | "                        | 10  | 6*† | 109                                | 53 | 30.7 |                                                                  |
| 329 | 667                                    | 2,357  | "                        | 10  | 6*  | 109                                | 57 | 28.2 |                                                                  |
| 330 | 670                                    | 2.3 7  | "                        | 10  | 6*† | 110                                | 01 | 25.8 |                                                                  |
| 331 | 673                                    | 2,357  | "                        | 10  | 6*† | 110                                | 05 | 23.3 |                                                                  |
| 332 | 677                                    | 281    | "                        | 10  | 8*  | 110                                | 10 | 19.5 | Milk River Lake Astronomical<br>Station.                         |
| 333 | 680                                    | 497    | Earth and<br>stone mound | 10  | 6*  | 110                                | 14 | 19.1 |                                                                  |
| 334 | 683                                    | 1,144  | "                        | 10  | 6*  | 110                                | 18 | 23.1 |                                                                  |
| 335 | 685                                    | 5,545  | Stone,                   | 10  | 6*  | 110                                | 21 | 45   |                                                                  |
| 336 | 699                                    | 3,677  | "                        | 10  | 6*  | 110                                | 39 | 54.9 |                                                                  |
| 337 | 702                                    | 3,023  | "                        | 12  | 6*  | 110                                | 43 | 46   | West of Milk River Astronomical<br>Station.                      |
| 338 | 705                                    | 7,527  | "                        | 10  | 6*  | 110                                | 48 | 28.1 |                                                                  |
| 339 | 708                                    | 3,204  | "                        | 10  | 6*  | 110                                | 51 | 42.8 | On west bank of Large Coulé,                                     |
| 340 | 711                                    | 3,444  | "                        | 10  | 6*  | 110                                | 55 | 42.7 |                                                                  |
| 341 | 714                                    | 2,412  | "                        | 10  | 6*  | 110                                | 59 | 30   |                                                                  |
| 342 | 717                                    | 7,848  | "                        | 10  | 6*  | 111                                | 04 | 21.3 |                                                                  |
| 343 | 720                                    | 5,550  | "                        | 10  | 6*  | 111                                | 07 | 56.1 | On crest of spur.                                                |
| 344 | 723                                    | 383    | "                        | 10  | 6*  | 111                                | 11 | 62.5 | Mound on west slope of spur of<br>East Butte.                    |
| 345 | 726                                    | 4,094  | "                        | 10  | 6*  | 111                                | 15 | 35.8 |                                                                  |
| 346 | 730                                    | 573    | "                        | 10  | 6*  | 111                                | 20 | 18.6 |                                                                  |
| 347 | 734                                    | 724    | "                        | 10  | 7*  | 111                                | 25 | 36.8 |                                                                  |
| 348 | 738                                    | 5,383  | "                        | 14  | 8*  | 111                                | 31 | 39.6 | East of West Butte.                                              |
| 349 | 740                                    | 197    | "                        | 10  | 6*† | 111                                | 33 | 26.6 | West of West Butte.                                              |
| 350 | 742                                    | 6,392  | "                        | 10  | 6*† | 111                                | 37 | 06.3 |                                                                  |
| 351 | 745                                    | 6,377  | "                        | 10  | 6*† | 111                                | 41 | 03.7 |                                                                  |
| 352 | 748                                    | 6,766  | "                        | 10  | 6*† | 111                                | 45 | 05.1 | Near Creek.                                                      |
| 353 | 751                                    | 5,770  | "                        | 10  | 6*† | 111                                | 48 | 52.7 |                                                                  |
| 354 | 754                                    | 5,770  | "                        | 10  | 6*† | 111                                | 52 | 56.2 |                                                                  |
| 355 | 757                                    | 7,524  | "                        | 10  | 6*† | 111                                | 57 | 05.1 |                                                                  |
| 356 | 760                                    | 3,160  | "                        | 10  | 6*  | 112                                | 00 | 19.5 | Red Creek Astronomical Station.                                  |
| 357 | 763                                    | 7,188  | "                        | 10  | 6*  | 112                                | 04 | 56.8 | East of Red Creek, near Whoop-<br>up Trail.                      |
| 358 | 768                                    | 2,493  | "                        | 10  | 6*  | 112                                | 10 | 46.3 |                                                                  |
| 359 | 771                                    | 4,268  | "                        | 10  | 6*  | 112                                | 15 | 01.4 |                                                                  |
| 360 | 774                                    | 4,353  | "                        | 10  | 6*  | 112                                | 18 | 59.7 |                                                                  |
| 361 | 777                                    | 2,061  | "                        | 10  | 6*  | 112                                | 22 | 34.6 |                                                                  |
| 362 | 779                                    | 2,675  | "                        | 10  | 6*  | 112                                | 25 | 19   |                                                                  |
| 363 | 781                                    | 6,772  | "                        | 10  | 6*  | 112                                | 28 | 37.9 |                                                                  |
| 364 | 785                                    | 279    | "                        | 12  | 6*  | 112                                | 32 | 50.3 | South branch Milk River, Astro-<br>nomical Station on west bank. |
| 365 | 787                                    | 6,221  | "                        | 10  | 6*  | 112                                | 36 | 27.5 |                                                                  |
| 366 | 790                                    | 7,610  | "                        | 10  | 6*  | 112                                | 40 | 38.7 |                                                                  |
| 367 | 793                                    | 7,613  | "                        | 10  | 6*  | 112                                | 44 | 36.3 |                                                                  |
| 368 | 798                                    | 2,305  | "                        | 10  | 6*  | 112                                | 50 | 19.6 |                                                                  |
| 369 | 801                                    | 3,201  | "                        | 10  | 6*  | 112                                | 54 | 26   |                                                                  |
| 370 | 804                                    | 3,361  | "                        | 10  | 6*  | 112                                | 58 | 25.1 | East Bluff, north branch of Milk<br>River. Astronomical Station. |
| 371 | 807                                    | 6,209  | "                        | 10  | 6*  | 113                                | 02 | 50.8 | On Milk River ridge.                                             |
| 372 | 811                                    | 2,846  | "                        | 10  | 6*  | 113                                | 07 | 34.3 | In valley.                                                       |
| 373 | 815                                    | 319    | "                        | 10  | 6*  | 113                                | 12 | 26   | On high ridge.                                                   |
| 374 | 817                                    | 7,258  | "                        | 10  | 6*  | 113                                | 16 | 13   | East of St. Mary's River.                                        |
| 375 | 820                                    | 4,680  | "                        | 10  | 6*  | 113                                | 19 | 45   | West of St. Mary's River.                                        |
| 376 | 824                                    | 3,946  | "                        | 10  | 6*  | 113                                | 24 | 54.4 |                                                                  |



| No. | Distance<br>from Lake of<br>the Woods. |        | Nature of Monument. |     |       | Longitude<br>West of<br>Greenwich. | Remarks.                                           |
|-----|----------------------------------------|--------|---------------------|-----|-------|------------------------------------|----------------------------------------------------|
|     | Miles.                                 | Links. | Stone,              | Ft. | Ft.   | °   '   "                          |                                                    |
| 377 | 825                                    | 6,138  | Stone,              | 12  | × 6*† | .. 113 26 35.3                     | Rocky Mountain. Astronomical<br>Station near lake. |
| 378 | 828                                    | 6,483  | "                   | 10  | 6*†   | .. 113 30 36.2                     |                                                    |
| 379 | 831                                    | 2,653  | "                   | 10  | 6*    | .. 113 33 59.9                     |                                                    |
| 380 | 836                                    | 3,385  | "                   | 12  | 6*    | .. 113 40 39                       | Belly River Astronomical Station.                  |
| 381 | 846                                    | 240    | "                   | 12  | 6*    | .. 113 53 19.6                     | Chief Mountain Lake Astrono-<br>mical Station.     |
|     | 853                                    | 2,529  | "                   | 7   | 6     | .. 114 02 56.5                     | Summit of Rocky Mountains,<br>1861.                |

(Signed)

D. R. CAMERON, Major, R.A., Her Britannic  
Majesty's Commissioner.ARCHIBALD CAMPBELL, United States'  
Commissioner.W. J. TWINING, Captain of Engineers,  
United States' Chief Astronomer.S. ANDERSON, Captain, R.E., British Chief  
Astronomer.

May 29, 1876.

## Inclosure 3.

(c.) A Set of Twenty-four Maps.\*

## Inclosure 4.

(D.)—Record of Proceedings at a meeting of the Commissioners appointed respectively by Her Britannic Majesty and by the President of the United States of America, to ascertain and mark the boundary line between the respective territories of Her Majesty and of the United States, the said line being that defined by the 2nd Article of the Convention of London, signed 20th October, 1818:

## Present:

DONALD R. CAMERON, Major, Royal Artillery, Commissioner on the part of  
Her Britannic Majesty.S. ANDERSON, Captain Royal Engineers, Chief Astronomer to Her Majesty's  
Commission.A. C. WARD, Captain Royal Engineers, Secretary to Her Majesty's Com-  
mission.ARCHIBALD CAMPBELL, Commissioner on the part of the United States of  
America.W. J. TWINING, Captain of the Corps of Engineers of the United States'  
Army, Chief Astronomer to the United States' Commission.

## 1. THE Chief Astronomers submit the following documents and maps:—

(a.) A detailed list, in duplicate, of forty astronomical stations in addition to one for the location of the most north-western point of the Lake of the Woods, at which observations were taken under their superintendence to determine the line described in the 2nd Article of the Convention of London (signed 20th October, 1818) between the terminal points, viz., the most north-western point of the Lake of the Woods and the eastern end of the international boundary line, previously marked between Akamina, in the Rocky Mountains, and the western coast of North America.

(b.) A descriptive list, in duplicate, of 388 monuments and marks placed on the boundary line, as derived from the astronomical stations enumerated in the list referred to in section (a) of this paragraph.

(c.) A duplicate set of 24 maps,\* on a scale of  $\frac{1}{126720}$ ths, or 1 inch to 2 miles,

\* These Maps are in the Foreign Office Library.

illustrating the topography of the country through which the boundary line runs, and indicating the relative positions of the various monuments and marks referred to in section (b) of this paragraph.

2. The 2nd Article of the Convention of London, signed 20th October, 1818, is read as follows :—

“It is agreed that a line drawn from the most north-western point of the Lake of the Woods, along the 49th parallel of north latitude, or, if the said point shall not be in the 49th parallel of north latitude, then that a line drawn from the said point due north or south, as the case may be, until the said line shall intersect the said parallel of north latitude, and from the point of such intersection due west along and with the said parallel, shall be the line of demarcation between the territories of His Britannic Majesty and those of the United States, and that the said line shall form the southern boundary of the said territories of His Britannic Majesty, and the northern boundary of the territories of the United States, from the Lake of the Woods to the Stony Mountains.”

3. The duplicate documents and maps enumerated in paragraph numbered (1) —one set for each of the respective Governments—having been examined and compared, are authenticated by the signatures of the Commissioners, who agree as follows :—

(1.) The 388 monuments detailed in the list referred to in section (b) of paragraph numbered 1, are on and mark the astronomical lines stipulated by the 2nd Article of the Convention of London (signed 20th October, 1818), to be the line of boundary between the territories of Her Britannic Majesty and of the United States of America, from the Lake of the Woods to the Stony (*i.e.*, Rocky) Mountains.

(2.) In the intervals between the monuments along the parallel of latitude it is agreed that the line has the curvature of a parallel of 49° north latitude, and that such characteristic shall determine all questions that may hereafter arise with reference to the position of the boundary at any point between neighbouring monuments.

(3.) It is further agreed that, in the event of any of the said 388 monuments or marks being obliterated beyond the power of recognition, the lost site or sites shall be recovered by their recorded position relatively to the next neighbouring unobliterated mark or marks.

(Signed)

D. R. CAMERON, *Major, R.A., Her  
Britannic Majesty's Commissioner.*  
ARCHIBALD CAMPBELL, *United  
States' Commissioner.*

*London, May 29, 1876.*



BELGIUM. No. 2 (1876).

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TREATY

BETWEEN

HER MAJESTY

AND THE

KING OF THE BELGIANS,

FOR THE

MUTUAL SURRENDER OF FUGITIVE  
CRIMINALS.

*Signed at Brussels, May 20, 1876.*

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*Presented to both Houses of Parliament by Command of Her Majesty.*  
1876.

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LONDON:

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[C.—1553.] Price 1½d.





# TREATY between Her Majesty and the King of the Belgians, for the Mutual Surrender of Fugitive Criminals.

*Signed at Brussels, May 20, 1876.*

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*[Ratifications exchanged at Brussels, June 28, 1876.]*

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HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the Belgians, having judged it expedient, with a view to the more complete prevention of crime within their respective territories, that persons charged with or convicted of the crimes hereinafter enumerated, and being fugitives from the justice of their country, should, under certain circumstances, be reciprocally delivered up; Their said Majesties have named as their Plenipotentiaries to conclude a Treaty for this purpose, that is to say:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, John Savile Lumley, Esquire, Companion of the Most Honourable Order of the Bath, Her Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of the Belgians;

And His Majesty the King of the Belgians, the Count d'Aspremont-Lynden, Officer of His Order of Leopold, Commander of the Order of the Ernestine Branch of the House of Saxony, Grand Cross of the Orders of Leopold of Austria, of the Legion of Honour, of the Lion of the Netherlands, and of the White Eagle of Russia, &c., &c., Member of the Senate, His Minister of Foreign Affairs;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

## ARTICLE I.

It is agreed that Her Britannic Majesty and His Majesty the King of the Belgians, shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally, any persons, except as regards Great Britain, native born and naturalized subjects of Her Britannic Majesty, and, except as regards Belgium, those who are by birth or who may have

Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, et Sa Majesté le Roi des Belges, ayant jugé opportun, afin de mieux assurer la répression des crimes dans leurs territoires respectifs, de se livrer réciproquement, sous certaines conditions, les personnes accusées ou condamnées du chef des crimes ci-après énumérés et qui auraient fui la justice de leur pays; les dites Majestés ont nommé pour leurs Plénipotentiaires, à l'effet de conclure un Traité dans ce but, savoir:

Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, John Savile Lumley, Esquire, Officier du Très Honorable Ordre du Bain, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté le Roi des Belges:

Et Sa Majesté le Roi des Belges, le Comte d'Aspremont-Lynden, Officier de Son Ordre de Léopold, Commandeur de l'Ordre de la Branche Ernestine de la Maison de Saxe, Grand Cordon des Ordres de Léopold d'Autriche, Grand-Croix des Ordres de la Légion d'Honneur, du Lion Néerlandais, et de l'Aigle Blanc de Russie, &c., &c., Sénateur, Son Ministre des Affaires Etrangères;

Lesquels, après s'être communiqué réciproquement leurs pleins pouvoirs, reconnus en bonne et due forme, sont convenus des Articles suivants:—

## ARTICLE I.

Il est convenu que Sa Majesté Britannique et Sa Majesté le Roi des Belges, sur la demande faite en leur nom par leurs Agents Diplomatiques respectifs, se livreront réciproquement tous les individus, sauf relativement à l'Angleterre les sujets de Sa Majesté Britannique par naissance ou naturalisation, et relativement à la Belgique ceux qui sont nés ou naturalisés citoyens

become citizens of Belgium, who, being accused or convicted as principals or accessories, of any of the crimes hereinafter specified, committed within the territories of the requiring party, shall be found within the territories of the other party.

1. Murder (including assassination, parricide, infanticide, and poisoning), or attempt to murder.

2. Manslaughter.

3. Counterfeiting or altering money, or uttering counterfeit or altered money.

4. Forgery, counterfeiting, or altering or uttering what is forged or counterfeited or altered.

5. Embezzlement or larceny.

6. Obtaining money or goods by false pretences.

7. Crimes by bankrupts against bankruptcy law.

8. Fraud by a bailee, banker, agent, factor, trustee, or director, or member or public officer of any company, made criminal by any law for the time being in force.

9. Rape: Carnal knowledge of a girl under the age of ten years; carnal knowledge of a girl above the age of ten years and under the age of twelve years; indecent assault upon any female or any attempt to have carnal knowledge of a girl under twelve years of age.

10. Abduction.

11. Child stealing.

12. Kidnapping.

13. Burglary or housebreaking.

14. Arson.

15. Robbery with violence (including intimidation).

16. Threats by letter or otherwise with intent to extort.

17. Piracy by law of nations.

18. Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

19. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

20. Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

21. Perjury and subornation of perjury.

Belges, qui étant poursuivis ou condamnés comme auteurs ou complices, pour l'un des crimes ou délits ci-après spécifiés, commis sur le territoire de la partie requérante, seront trouvés sur le territoire de l'autre partie :

1. Meurtre (y compris l'assassinat, le parricide, l'infanticide, et l'empoisonnement) ou tentative de meurtre.

2. Homicide commis sans préméditation ou guet-apens.

3. Contrefaçon ou altération de monnaie, ainsi que mise en circulation de la monnaie contrefaite ou altérée.

4. Faux, contrefaçon, ou altération, ou mise en circulation de ce qui est falsifié, contrefait, ou altéré.

5. Soustraction frauduleuse ou vol.

6. Escroquerie d'argent, valeurs, ou marchandises sous de faux prétextes.

7. Crimes des banqueroutiers frauduleux prévus par la loi.

8. Détournement ou dissipation frauduleux au préjudice d'autrui, d'effets, deniers, marchandises, quittances, écrits de toute nature, contenant ou opérant obligation ou décharge, et qui avaient été remis à la condition de les rendre ou d'en faire un usage ou un emploi déterminé.

9. Viol: Attentat à la pudeur sur une jeune fille de moins de 12 ans, dans les cas prévus simultanément par la législation des deux pays.

10. Enlèvement de mineurs.

11. Enlèvement d'enfant.

12. Attentat à la liberté individuelle commis par des particuliers.

13. Vol avec effraction ou escalade.

14. Incendie.

15. Vol avec violence (comprenant l'intimidation).

16. Menaces d'attentat punissable d'une peine criminelle.

17. Prise d'un navire par les marins ou passagers par fraude ou violence envers le capitaine.

18. Echouement, perte, destruction, ou tentative d'échouement, de perte, ou de destruction d'un navire à la mer par le capitaine ou les officiers et gens de l'équipage.

19. Attaque ou résistance à bord d'un navire en haute mer avec violence et voies de fait envers le capitaine par plus du tiers de l'équipage.

20. Révolte ou complot de révolte par deux ou plusieurs personnes à bord d'un navire en haute mer, contre l'autorité du capitaine.

21. Faux serment, faux témoignage, et subornation de témoins.



22. Malicious injury to property, if the offence be indictable.

23. Aggravated or indecent assault.

Provided that the surrender shall be made only when in the case of a person accused, the commission of the crime shall be so established as that the laws of the country where the fugitive or person accused shall be found would justify his apprehension and commitment for trial if the crime had been there committed; and in the case of a person alleged to have been convicted, on such evidence as, according to the laws of the country where he is found, would prove that he had been convicted.

In no case can the surrender be made unless the crime shall be punishable according to the laws in force in both countries with regard to extradition.

## ARTICLE II.

In the dominions of Her Britannic Majesty, other than the Colonies or foreign possessions of Her Majesty, the manner of proceeding shall be as follows:—

### I. In the case of a person accused—

The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Minister or other Diplomatic Agent of His Majesty the King of the Belgians, accompanied by a warrant of arrest or other equivalent judicial document, issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against the accused in Belgium, together with duly authenticated depositions or statements taken on oath or upon solemn affirmation before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him. The said Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

22. Destruction ou dégradation de constructions, machines, plantations, récoltes, instruments d'agriculture, appareils télégraphiques, ouvrages d'art, navires, tombeaux; dommages causés volontairement au bétail et à la propriété mobilière, délits qui sont réprimés en Angleterre sous le nom de "malicious injuries to property."

23. (a.) Coups et blessures graves.

(b.) Attentats à la pudeur sans violence sur des enfants au-dessous de dix ans.

(c.) Attentats à la pudeur avec violence sur des personnes de l'un ou de l'autre sexe.

Toutefois, l'extradition ne sera accordée, dans le cas d'une personne accusée, que si la perpétration du crime est établie de telle façon que les lois du pays où le fugitif accusé sera trouvé justifieraient son arrestation et son emprisonnement si le crime avait été commis dans ce pays; et dans le cas d'une personne prétendument condamnée, que sur la production d'une preuve qui, d'après les lois du pays où le fugitif a été trouvé, établirait suffisamment qu'il a été condamné.

En aucun cas l'extradition ne pourra avoir lieu que lorsque le crime sera prévu par la législation sur l'extradition en vigueur dans les deux pays.

## ARTICLE II.

Dans les Etats de Sa Majesté Britannique, autres que les Colonies ou les possessions étrangères de Sa Majesté, la manière de procéder sera la suivante:—

### I. S'il s'agit d'une personne accusée—

La demande d'extradition sera adressée au Premier Secrétaire d'Etat de Sa Majesté pour les Affaires Etrangères par le Ministre ou autre Agent Diplomatique de Sa Majesté le Roi des Belges. A cette demande seront joints un mandat d'arrêt ou autre document judiciaire équivalent, délivré par un Juge ou Magistrat dûment autorisé à prendre connaissance des actes imputés à l'accusé en Belgique, ainsi que les dépositions authentiques ou les déclarations faites sous serment ou sous affirmation solennelle devant ce Juge ou Magistrat, énonçant clairement les dits actes, et contenant, outre le signalement de la personne réclamée, toutes les particularités qui pourraient servir à établir son identité.

Le dit Secrétaire d'Etat transmettra ces documents au Premier Secrétaire d'Etat de Sa Majesté Britannique pour les Affaires Intérieures, qui, par un ordre de sa main et muni de son sceau, signifiera à l'un ou l'autre Magistrat de Police à Londres que la demande d'extradition a été faite, et le requerra, s'il y a lieu, de délivrer un mandat pour l'arrestation du fugitif.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the fugitive shall have been apprehended he shall be brought before the police magistrate who issued the warrant, or some other police magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the Government of His Majesty the King of the Belgians.

## II. In the case of a person convicted—

The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Minister or other Diplomatic Agent in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place, and date of his conviction. The evidence to be produced before the Police Magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person shall have the right to apply for a writ of *habeas corpus*; if he should so apply, his surrender must be deferred until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant.

## ARTICLE III.

In the dominions of His Majesty the King of the Belgians, other than the Colonies or Foreign Possessions of His said Majesty, the manner of proceeding shall be as follows:—

### I. In the case of a person accused—

A la réception d'un semblable ordre du Secrétaire d'Etat, et sur la production de telle preuve qui, dans l'opinion de ce Magistrat, justifierait l'émission du mandat si le crime avait été commis dans le Royaume Uni, il délivrera le mandat requis.

Lorsqu'alors le fugitif aura été arrêté, il sera amené devant le Magistrat de Police qui a lancé le mandat, ou devant un autre Magistrat de Police à Londres. Si la preuve qu'on produira est de nature à justifier, selon la loi Anglaise, la mise en jugement du prisonnier dans le cas où le crime dont il est accusé aurait été commis en Angleterre, le Magistrat de Police l'enverra en prison pour attendre le mandat du Secrétaire d'Etat, nécessaire à l'extradition, et il adressera immédiatement au Secrétaire d'Etat une attestation de l'emprisonnement avec un rapport sur l'affaire.

Après l'expiration d'un certain temps, qui ne pourra jamais être moindre de quinze jours depuis l'emprisonnement de l'accusé, le Secrétaire d'Etat, par un ordre de sa main et muni de son sceau, ordonnera que le criminel fugitif soit livré à telle personne qui sera dûment autorisée à le recevoir au nom du Gouvernement de Sa Majesté le Roi des Belges.

## II. S'il s'agit d'une personne condamnée—

La marche de la procédure sera la même que dans le cas d'une personne accusée, sauf que le mandat à transmettre par le Ministre ou autre Agent Diplomatique, à l'appui de la demande d'extradition, énoncera clairement le crime pour lequel la personne réclamée aura été condamnée, et mentionnera le fait, le lieu, et la date du jugement. La preuve à produire devant le Magistrat de Police sera telle que d'après la loi Anglaise elle établirait que le prisonnier a été condamné pour le crime dont on l'accuse.

Après que le Magistrat de Police aura envoyé la personne accusée ou condamnée en prison pour attendre l'ordre d'extradition du Secrétaire d'Etat, cette personne aura le droit de réclamer une ordonnance d'*habeas corpus*; l'extradition doit alors être différée jusqu'après la décision de la Cour sur le renvoi de l'ordonnance, et elle ne pourra avoir lieu que si la décision est contraire au demandeur.

## ARTICLE III.

Dans les Etats de Sa Majesté le Roi des Belges, autres que les Colonies ou possessions étrangères de Sa dite Majesté, on procédera de la façon suivante:—

### I. S'il s'agit d'une personne accusée—



The requisition for the surrender shall be made to the Minister for Foreign Affairs of His Majesty the King of the Belgians by the Minister or other Diplomatic Agent of Her Britannic Majesty, accompanied by a warrant of arrest or other equivalent judicial document issued by a Judge or Magistrate duly authorized to take cognizance of the acts charged against the accused in Great Britain, together with duly authenticated depositions or statements taken on oath or upon solemn affirmation before such Judge or Magistrate, clearly setting forth the said acts and containing a description of the person claimed, and any other particulars which may serve to identify him.

The Minister for Foreign Affairs shall transmit the warrant of arrest, with the documents thereto annexed, to the Minister of Justice, who shall forward the same to the proper judicial authority, in order that the warrant of arrest may be put in course of execution by the Chamber of the Council (*Chambre du Conseil*) of the Court of First Instance of the place of residence of the accused, or of the place where he may be found.

The foreigner may claim to be provisionally set at liberty in any case in which a Belgian enjoys that right, and under the same conditions. The application shall be submitted to the Chamber of the Council (*Chambre du Conseil*).

The Government will take the opinion of the Chamber of Indictments or Investigation (*Chambre des Mises en Accusation*) of the Court of Appeal, within whose jurisdiction the foreigner shall have been arrested.

The hearing of the case shall be public, unless the foreigner should demand that it should be with closed doors.

The public authorities and the foreigner shall be heard. The latter may obtain the assistance of Counsel.

Within a fortnight from the receipt of the documents, they shall be returned, with a reasoned opinion, to the Minister of Justice, who shall decide and may order that the accused be delivered to the person duly authorized on the part of the Government of Her Britannic Majesty.

## II. In case of a person convicted—

The course of proceeding shall be the same as in the case of a person accused, except that the conviction or sentence of condemnation issued in original or in an authenticated copy, to be transmitted by the Minister or other Diplomatic Agent in support of his requisition, shall clearly set forth the crime of which the person claimed has been convicted, and state the fact,

La demande d'extradition sera adressée au Ministre des Affaires Etrangères de Sa Majesté le Roi des Belges par le Ministre ou autre Agent Diplomatique de Sa Majesté Britannique; à cette demande seront joints un mandat d'arrêt ou autre document judiciaire équivalent délivré par un Juge ou Magistrat dûment autorisé à prendre connaissance des actes imputés à l'accusé dans la Grande Bretagne, ainsi que les dépositions authentiques ou les déclarations faites sous serment ou sous affirmation solennelle devant ce Juge ou Magistrat, énonçant clairement les dits actes, et contenant, outre le signalement de la personne réclamée, toutes les particularités qui pourraient servir à établir son identité.

Le Ministre des Affaires Etrangères transmettra le mandat d'arrêt, avec les pièces annexées, au Ministre de la Justice, qui fera parvenir les documents à l'autorité judiciaire, à l'effet de voir rendre le dit mandat d'arrêt exécutoire par la Chambre du Conseil du Tribunal de Première Instance du lieu de la résidence de l'inculpé, ou du lieu où il pourra être trouvé.

L'étranger pourra réclamer la liberté provisoire dans le cas où un Belge jouit de cette faculté et dans les mêmes conditions. La demande sera soumise à la Chambre du Conseil.

Le Gouvernement prendra l'avis de la Chambre des Mises en Accusation de la Cour d'Appel dans le ressort de laquelle l'étranger aura été arrêté.

L'audience sera publique, à moins que l'étranger ne réclame le huis-clos.

Le Ministère public et l'étranger seront entendus. Celui-ci pourra se faire assister d'un Conseil.

Dans la quinzaine à dater de la réception des pièces, elles seront renvoyées avec l'avis motivé au Ministre de la Justice, qui statuera et pourra ordonner que l'inculpé soit livré à la personne qui sera dûment autorisée au nom du Gouvernement de Sa Majesté Britannique.

## II. S'il s'agit d'une personne condamnée—

Le cours de la procédure sera le même que dans le cas d'une personne accusée, sauf que le jugement ou l'arrêt de condamnation délivré en original ou en expédition authentique, à transmettre par le Ministre ou l'Agent Diplomatique à l'appui de la demande d'extradition, énoncera clairement le crime pour lequel la personne réclamée aura été condamnée, et mentionnera le fait,

place, and date of his conviction. The evidence to be produced shall be such as would, according to the Belgian laws, prove that the prisoner was convicted of the crime charged.

#### ARTICLE IV.

A fugitive criminal may, however, be apprehended under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority in either country, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant, if the crime had been committed or the prisoner convicted in that part of the dominions of the two Contracting Parties in which he exercises jurisdiction: Provided, however, that, in the United Kingdom, the accused shall, in such case, be sent as speedily as possibly before a Police Magistrate in London. He shall be discharged, as well in the United Kingdom as in Belgium, if within fourteen days a requisition shall not have been made for his surrender by the Diplomatic Agent of his country, in the manner directed by Articles II and III of this Treaty.

The same rule shall apply to the cases of persons accused or convicted of any of the crimes specified in this Treaty, committed on the high seas on board any vessel of either country which may come into a port of the other.

#### ARTICLE V.

If the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal (or within two months after the decision of the Court upon the return to a writ of *habeas corpus* in the United Kingdom), he shall be discharged from custody, unless sufficient cause be shown to the contrary.

#### ARTICLE VI.

When any person shall have been surrendered by either of the High Contracting Parties to the other, such person shall not, until he has been restored or had an opportunity of returning to the country from whence he was surrendered, be triable or tried for any offence committed in the other country prior to the surrender, other than the particular offence on account of which he was surrendered.

le lieu, et la date du jugement. La preuve à produire sera telle que, conformément aux lois Belges, elle établirait que le prisonnier a été condamné pour le crime dont on l'accuse.

#### ARTICLE IV.

Un criminel fugitif peut, cependant, être arrêté sur un mandat délivré par tout Magistrat de Police, Juge de Paix, ou autre autorité compétente dans chaque pays, à la suite d'un avis, d'une plainte, d'une preuve, ou de tout autre acte de procédure qui, dans l'opinion de la personne délivrant le mandat, justifierait ce mandat, si le crime avait été commis ou la personne condamnée dans la partie des Etats des deux Contractants où elle exerce juridiction: pourvu que, cependant, s'il s'agit du Royaume Uni, l'accusé soit, dans un pareil cas, envoyé aussi promptement que possible devant un Magistrat de Police à Londres. Il sera relâché, tant dans le Royaume Uni qu'en Belgique, si dans les quatorze jours une demande d'extradition n'a pas été faite par l'Agent Diplomatique de son pays, suivant le mode indiqué par les Articles II et III de ce Traité.

La même règle s'appliquera aux cas de personnes poursuivies ou condamnées du chef de l'un des crimes spécifiés dans ce Traité et commis en pleine mer, à bord d'un navire de l'un des deux pays et qui viendrait dans un port de l'autre.

#### ARTICLE V.

Si le criminel fugitif qui a été arrêté n'est pas livré et emmené dans les deux mois après son arrestation (ou dans les deux mois après la décision de la Cour sur le renvoi d'une ordonnance d'*habeas corpus* dans le Royaume Uni), il sera mis en liberté, à moins qu'il n'y ait un motif suffisant de le retenir en prison.

#### ARTICLE VI.

Lorsqu'une personne aura été extradée par l'une des Hautes Parties Contractantes, cette personne jusqu'à ce qu'elle soit rentrée dans le pays d'où elle a été extradée, ou qu'elle ait eu occasion de le faire, ne sera poursuivie pour aucun délit commis dans l'autre pays avant l'extradition, autre que celui pour lequel l'extradition a eu lieu.



## ARTICLE VII.

No accused or convicted person shall be surrendered, if the offence in respect of which his surrender is demanded shall be deemed by the party upon which it is made to be a political offence, or to be an act connected with (*connexe à*) such an offence, or if he prove, to the satisfaction of the Police Magistrate, or of the Court before which he is brought on *habeas corpus*, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or to punish him for an offence of a political character.

## ARTICLE VIII.

Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the fact of conviction, shall be received in evidence in proceedings in the dominions of the other, if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken.

Provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath or solemn affirmation of some witness, or by being sealed with the official seal of the Minister of Justice, or some other Minister of State.

## ARTICLE IX.

The surrender shall not take place if, since the commission of the acts charged, the accusation, or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the country where the accused shall have taken refuge.

## ARTICLE X.

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes committed upon their respective territories, his surrender shall be granted to that State whose demand is earliest in date; unless any other arrangement should be made between the Governments which have claimed him, either on account of the gravity of the crimes committed, or for any other reasons.

## ARTICLE VII.

Aucune personne accusée ou condamnée ne sera extradée, si le délit pour lequel l'extradition est demandée est considéré par la partie requise comme un délit politique ou un fait connexe à un semblable délit, ou si la personne prouve, à la satisfaction du Magistrat de Police ou de la Cour devant laquelle elle est amené pour l'*habeas corpus*, ou du Secrétaire d'Etat, que la demande d'extradition a été faite, en réalité, dans le but de la poursuivre ou de la punir pour un délit d'un caractère politique.

## ARTICLE VIII.

Les mandats, dépositions, déclarations sous serment, délivrés ou recueillis dans les Etats de l'une des deux Hautes Parties Contractantes, les copies de ces pièces, ainsi que les certificats ou les documents judiciaires établissant le fait de la condamnation, seront reçus comme preuve dans la procédure des Etats de l'autre partie, s'ils sont revêtus de la signature ou accompagnés de l'attestation d'un Juge, Magistrat, ou fonctionnaire du pays où ils ont été délivrés ou recueillis.

Pourvu que ces mandats, dépositions, déclarations, copies, certificats, et documents judiciaires soient rendus authentiques par le serment ou affirmation solennelle d'un témoin, ou par le sceau officiel du Ministre de la Justice ou d'un autre Ministre d'Etat.

## ARTICLE IX.

L'extradition n'aura pas lieu si, depuis les faits imputés, les poursuites, ou la condamnation, la prescription de l'action ou de la peine est acquise d'après les lois du pays où le prévenu s'est réfugié.

## ARTICLE X.

Si l'individu réclamé par l'une des Hautes Parties Contractantes, en exécution du présent Traité, est aussi réclamé par une ou plusieurs autres Puissances, du chef d'autres crimes commis sur leurs territoires respectifs, son extradition sera accordée à l'Etat dont la demande est la plus ancienne en date, à moins qu'il n'existe entre les Gouvernements qui l'ont réclamé un arrangement qui déciderait de la préférence, soit à raison de la gravité des crimes commis, soit à raison de tout autre motif.

## ARTICLE XI.

If the individual claimed should be under prosecution, or condemned by the Courts of the country where he has taken refuge, his surrender may be deferred until he shall have been set at liberty in due course of law.

In case he should be proceeded against or detained in such country, on account of obligations contracted towards private individuals, his surrender shall nevertheless take place, the injured party retaining his right to prosecute his claims before the competent authority.

## ARTICLE XII.

Every article found in the possession of the individual claimed at the time of his arrest shall, if the competent authority so decide, be seized, in order to be delivered up with his person at the time when the surrender shall be made. Such delivery shall not be limited to the property or articles obtained by stealing or by fraudulent bankruptcy, but shall extend to every thing that may serve as proof of the crime. It shall take place even when the surrender, after having been ordered, shall be prevented from taking place by reason of the escape or death of the individual claimed.

The rights of third parties with regard to the said property or articles are nevertheless reserved.

## ARTICLE XIII.

Each of the High Contracting Parties shall defray the expenses occasioned by the arrest within its territories, the detention, and the conveyance to its frontier, of the persons whom it may consent to surrender in pursuance of the present Treaty.

## ARTICLE XIV.

The stipulations of the present Treaty shall be applicable to the Colonies and foreign Possessions of the two High Contracting Parties.

The requisition for the surrender of a fugitive criminal who has taken refuge in a Colony or foreign Possession of either Party, shall be made to the Governor or Chief Authority of such Colony or Possession by the Chief Consular Officer of the other in such Colony or Possession; or, if the fugitive has escaped from a Colony or foreign Possession of the Party on whose behalf the requisition is made, by the Governor or Chief Authority of such Colony or Possession.

Such requisition may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective

## ARTICLE XI.

Si l'individu réclamé est poursuivi ou condamné par les Tribunaux du pays où il s'est réfugié, son extradition pourra être différée jusqu'à ce qu'il ait été mis en liberté selon le cours régulier de la loi.

Dans le cas où il serait poursuivi ou détenu dans le même pays à raison d'obligations par lui contractées envers des particuliers, son extradition n'en aura pas moins lieu, sauf à la partie lésée à faire valoir ses droits devant l'autorité compétente.

## ARTICLE XII.

Tout objet trouvé en la possession de l'individu réclamé au moment de son arrestation sera, si l'autorité compétente en a ainsi ordonné, saisi pour être livré avec sa personne lorsque l'extradition aura lieu. Cette remise ne sera pas limitée aux objets acquis par vol ou banqueroute frauduleuse, mais elle s'étendra à toute chose qui pourrait servir de pièce de conviction. Elle se fera même si l'extradition, après avoir été accordée, ne peut s'accomplir par suite de l'évasion ou de la mort de l'individu réclamé.

Sont, cependant, réservés les droits des tiers sur les objets susmentionnés.

## ARTICLE XIII.

Chacune des Hautes Parties Contractantes supportera les frais occasionnés par l'arrestation sur son territoire, la détention, et le transport à la frontière des personnes qu'elle consentirait à extraditer en exécution du présent Traité.

## ARTICLE XIV.

Les stipulations du présent Traité seront applicables aux Colonies et Possessions étrangères des deux Hautes Parties Contractantes.

La demande d'extradition d'un criminel fugitif qui s'est réfugié dans une Colonie ou Possession étrangère de l'une des Parties sera faite au Gouverneur ou au fonctionnaire principal de cette Colonie ou Possession par le principal Agent Consulaire de l'autre dans cette Colonie ou Possession; ou, si le fugitif s'est échappé d'une Colonie ou Possession étrangère de la Partie au nom de laquelle l'extradition est demandée, par le Gouverneur ou le fonctionnaire principal de cette Colonie ou Possession.

Ces demandes seront faites ou accueillies en suivant toujours, aussi exactement que possible, les stipulations de ce Traité par



Governors or Chief Authorities, who, however, shall be at liberty either to grant the surrender, or to refer the matter to their Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign Possessions for the surrender of Belgian criminals who may there take refuge, on the basis, as nearly as may be, of the provisions of the present Treaty.

#### ARTICLE XV.

The present Treaty shall come into operation ten days after its publication in conformity with the laws of the respective countries.

After the Treaty shall so have been brought into operation, the Treaty concluded between the High Contracting Parties on the 31st July, 1872, shall be considered as cancelled, except as to any proceeding that may have already been taken or commenced in virtue thereof.

Either party may at any time terminate the Treaty on giving to the other six months' notice of its intention.

#### ARTICLE XVI.

The present Treaty shall be ratified, and the Ratifications shall be exchanged at Brussels as soon as may be within six weeks from the date of signature.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Brussels, the twentieth day of May, in the year of Our Lord one thousand eight hundred and seventy-six.

(L.S.) J. SAVILE LUMLEY.

les Gouverneurs ou premiers fonctionnaires, qui, cependant, auront la faculté ou d'accorder l'extradition ou d'en référer à leur Gouvernement.

Sa Majesté Britannique se réserve, cependant, le droit de faire des arrangements spéciaux dans les Colonies Anglaises ou Possessions étrangères pour l'extradition de criminels Belges qui y auraient cherché refuge, en se conformant, aussi exactement que possible, aux stipulations du présent Traité.

#### ARTICLE XV.

Le présent Traité entrera en vigueur dix jours après sa publication dans les formes prescrites par la législation des pays respectifs.

Aussitôt que le Traité sera entré en vigueur, le Traité conclu entre les Hautes Parties Contractantes le 31 Juillet, 1872, sera considéré comme abrogé, excepté en ce qui concerne toutes poursuites qui pourraient avoir eu leur effet, ou qui pourraient avoir commencé en vertu de ce Traité.

Chaque partie peut en tout temps mettre fin au Traité, en donnant à l'autre, six mois à l'avance, avis de son intention.

#### ARTICLE XVI.

Le présent Traité sera ratifié, et les ratifications seront échangées à Bruxelles le plus tôt possible dans les six semaines de la date de la signature.

En foi de quoi les Plénipotentiaires respectifs ont signé ce même Traité, et y ont apposé le sceau de leurs armes.

Fait à Bruxelles, le vingtième jour de Mai, l'an de grâce mil huit cent soixante-seize.

(L.S.) C<sup>TE</sup>. D'ASPREMONT-LYNDEN.

TREATY between Her Majesty and the King of the  
Belgians, for the Mutual Surrender of Fugitive  
Criminals.

*Signed at Brussels, May 20, 1876.*

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*Presented to both Houses of Parliament by Com-  
mand of Her Majesty. 1876.*

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LONDON :

PRINTED BY HARRISON AND SONS.



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BELGIUM. No. 1 (1876).

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CONVENTION

BETWEEN

HER MAJESTY

AND THE

KING OF THE BELGIANS,

REGULATING THE

COMMUNICATIONS BY POST BETWEEN THE  
BRITISH AND BELGIAN DOMINIONS.

*Signed at London, February 17, 1876.*

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*Presented to both Houses of Parliament by Command of Her Majesty.*  
1876.

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LONDON:

PRINTED BY HARRISON AND SONS.

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CONVENTION between Her Majesty and the King of the Belgians, regulating the Communications by Post between the British and Belgian Dominions.

*Signed at London, February 17, 1876.*

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[*Ratifications exchanged at London, March 24, 1876.*]

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HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the Belgians, being desirous of strengthening the friendly relations which unite the two countries, and wishing to regulate by special arrangements (forming a sequel to the General Postal Treaty concluded at Berne on the 9th of October 1874) the postal relations between their respective Offices, have named as their Plenipotentiaries for this purpose, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Edward Henry Stanley, Earl of Derby, Baron Stanley of Bickerstaffe, a Peer and a Baronet of England, a Member of Her Britannic Majesty's most Honourable Privy Council, Her Majesty's Principal Secretary of State for Foreign Affairs, &c. &c., and the Right Honourable John James Robert Manners (commonly called Lord John Manners), a Member of Her Majesty's most Honourable Privy Council, a Member of Parliament, Her Majesty's Postmaster-General;

And His Majesty the King of the Belgians, Baron Henry Solvyns, Grand Officer of the Order of Leopold, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of the Belgians to Her Britannic Majesty, &c. &c.;

Who, after having reciprocally communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

There shall be between the Post Offices of Great Britain and Belgium a periodical and regular exchange of correspondence

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SA Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, et Sa Majesté le Roi des Belges, désirant resserrer les liens d'amitié qui unissent les deux pays, et voulant régler par des arrangements particuliers (faisant suite au Traité de l'Union Générale des Postes, conclu à Berne le 9 Octobre 1874), les relations postales entre leurs Administrations respectives, ont nommé pour leurs Plénipotentiaires à cet effet, savoir:—

Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, le très Honorable Edouard Henri Stanley, Comte de Derby, Baron Stanley de Bickerstaffe, Pair et Baronet d'Angleterre, Membre du Très Honorable Conseil Privé de Sa Majesté Britannique, Principal Secrétaire d'Etat de Sa Majesté pour les Affaires Etrangères, &c. &c., et le Très Honorable Jean Jacques Robert Manners, Lord John Manners, Conseiller de Sa Majesté Britannique en son Conseil Privé, Membre du Parlement, Maître Général des Postes;

Et Sa Majesté le Roi des Belges, le Baron Henri Solvyns, Grand Officier de l'Ordre de Léopold, Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté le Roi des Belges près Sa Majesté Britannique, &c. &c.;

Lesquels, après s'être communiqué réciproquement leurs pleins pouvoirs respectifs, trouvés en bonne et due forme, sont convenus des Articles suivants:—

ARTICLE I.

Il y aura entre l'Administration des Postes de la Grande Bretagne et l'Administration des Postes de Belgique un échange

B 2

of every kind in international service as well as in transit.

## ARTICLE II.

The exchange of correspondence between the two Offices shall be carried out through the following Post Offices :—

On the part of Great Britain—

1. Dover.
2. London.

On the part of Belgium—

1. Ostend (local office).
2. The Offices travelling between Brussels and Ostend.
3. The Office travelling between Brussels and Tournai.
4. The Office travelling between Ghent and Mouscron.

The two Offices may, if they think proper, agree to name other Offices for the exchange of correspondence.

## ARTICLE III.

The mails between Great Britain and Belgium shall be conveyed by means of special packets running between Ostend and Dover.

Each Office shall have the right to employ subsidiarily, and so far as it shall be of any advantage on the score of speed, the route *viâ* France and the French packets from Calais to Dover, for the conveyance of its correspondence in closed bags to the other Office.

With regard to the mails conveyed on account of other Offices, it will be the duty of the despatching Office to indicate the route to be followed.

## ARTICLE IV.

The Post Offices of Great Britain and of Belgium shall fix by a mutual agreement, the time for the departure of the packets from Ostend and Dover, and they shall regulate this service in connection with the railway trains, so as to insure with the greatest possible speed, the transmission of mails for international as well as for transit service.

## ARTICLE V.

The Belgian Government shall continue to perform, at its own expense, the double daily service for the conveyance of the mails from Ostend to Dover and *vice versa* (a service which must be performed at least six days in the week, the service on Sunday being optional).

périodique et régulier de correspondances de toute nature tant en service international qu'en transit.

## ARTICLE II.

L'échange des correspondances entre les deux Administrations s'effectuera par l'intermédiaire des Bureaux de Poste suivants :

Du côté de la Grande Bretagne :

- 1°. Douvres ;
- 2°. Londres.

Du côté de la Belgique :

- 1°. Ostende (bureau local) ;
- 2°. Bureaux ambulants de Bruxelles à Ostende ;
- 3°. Bureau ambulant de Bruxelles à Tournai ;
- 4°. Bureau ambulant de Gand à Mouscron.

Les deux Administrations pourront, si elles le jugent utile, désigner d'un commun accord, d'autres Bureaux d'échange.

## ARTICLE III.

Le transport des malles entre la Grande Bretagne et la Belgique sera effectué au moyen de paquebots spéciaux naviguant entre Ostende et Douvres.

Chaque Office aura la faculté d'employer subsidiairement, et en tant qu'il y aura un avantage sous le rapport de la célérité, la voie de France et des paquebots Français de Calais à Douvres, pour la transmission de ses correspondances en paquets clos à l'autre Office.

Quant aux dépêches transportées pour compte d'autres Administrations, il appartiendra à l'Administration expéditrice d'indiquer la voie à suivre.

## ARTICLE IV.

Les Administrations des Postes de la Grande Bretagne et de Belgique fixeront d'un commun accord les heures de départ des paquebots d'Ostende et de Douvres, et elles régleront les coïncidences de ce service avec les trains du chemin de fer, de manière à assurer dans les meilleures conditions de célérité possibles la transmission des dépêches tant en service international qu'en transit.

## ARTICLE V.

Le Gouvernement Belge continuera à exécuter à ses frais, le double service quotidien de transport des malles d'Ostende à Douvres et retour (service qui devra fonctionner au moins six jours par semaine, les départs du Dimanche étant facultatifs).



## ARTICLE VI.

The packets employed for the conveyance of the correspondence between Ostend and Dover shall be steam-boats of sufficient power and size for the service in which they are to be employed. They shall be vessels belonging to Government or freighted by order of Government.

These vessels shall be considered, and treated in the port of Dover and in all other British ports at which they may accidentally touch, as vessels of war, and be there entitled to all the honours and privileges which the interests and importance of the service in which they are employed, demand.

They shall be exempted in those ports, as well on their entrance as on their departure, from all tonnage, navigation, and port dues, excepting however the vessels freighted by order of Government, which must pay such dues in those ports where they are levied on behalf of corporations, private companies, or private individuals.

They shall not be diverted from their especial duty—that is to say, the conveyance of the mails—by any authority whatever, or be liable to seizure, detention, embargo, or *arrêt de prince*.

## ARTICLE VII.

The captains of the Belgian packets shall receive from the agents appointed for the service of exchange, the mails at Ostend and at Dover, the bags being closed and sealed.

The number of these bags and the time of their delivery shall be entered on a way bill, which the Captains or the Officers entrusted under their orders with the care of the mails, shall deliver on their arrival to the office for which they are destined.

They shall bring back to the despatching office a certificate of the punctual delivery of the mails, delivered to them by the agent who shall have received them.

## ARTICLE VIII.

Unless prevented by causes over which they have no control, the captains of the packets engaged in carrying the mails between Ostend and Dover shall proceed directly to their destination.

If in consequence of stress of weather or damage, they should be compelled to alter their course, and to put into any other port than Ostend or Dover, they must justify such deviation in the manner that their respective Offices shall deem advisable.

Whenever a packet conveying mails shall be compelled to put into any other

## ARTICLE VI.

Les paquebots employés pour le transport des correspondances entre Ostende et Douvres, seront des bateaux à vapeur d'une force et d'une dimension suffisante pour le service auquel ils sont destinés. Ce seront des bâtiments appartenant à l'Etat ou frétés pour le compte de l'Etat.

Ces bâtiments seront considérés et reçus dans le port de Douvres et dans tous les autres ports Britanniques où ils pourraient accidentellement aborder, comme vaisseaux de guerre, et ils y jouiront des honneurs et privilèges que réclament les intérêts et l'importance du service auquel ils sont affectés.

Ils seront exempts dans ces ports, tant à leur entrée qu'à leur sortie, de tous droits de tonnage, de navigation, et de port, excepté toutefois les bâtiments frétés pour le compte de l'Etat, lesquels devront acquitter ces droits dans les ports où ils sont établis au profit des corporations, compagnies particulières, ou personnes privées.

Ils ne pourront être détournés de leur destination spéciale, c'est à dire du transport des dépêches, par quelque autorité que ce soit, ni être sujets à saisie arrêt, embargo, ou arrêt de Prince.

## ARTICLE VII.

Les commandants des paquebots Belges recevront des mains des agents préposés au service d'échange, des dépêches à Ostende et à Douvres, les valises fermées et cachetées.

Le nombre de ces valises et l'heure de leur remise seront constatés sur une feuille de route que ces Commandants ou les Officiers chargés sous leurs ordres du soin des dépêches, remettront à leur arrivée au bureau de destination.

Ils devront rapporter à l'office expéditeur un certificat de l'exacte remise de ces dépêches, délivré par l'agent qui les aura reçues.

## ARTICLE VIII.

A moins d'empêchement de force majeure, les commandants des paquebots employés au transport des dépêches entre Ostende et Douvres devront faire route directement pour leur destination.

Si par suite de gros temps ou d'avaries, ils sont contraints de changer de route, et de relâcher dans un port autre que celui d'Ostende ou de Douvres, ils devront en justifier par tel moyen que l'un ou l'autre des deux offices jugerait à propos d'établir.

Dans le cas où un paquebot porteur des dépêches se trouverait forcé de relâcher dans

than its destined port, the captain shall immediately deliver the mails to the local Post-office, or forward them towards their destination, under the charge of an officer of the vessel.

#### ARTICLE IX.

The boats which shall be necessary for taking on board or landing the mails, or for assisting the steam packets upon their arrival or departure, shall be provided, both at Dover and Ostend by the Belgian Government, and at its expense.

#### ARTICLE X.

The mail packets shall be at liberty to take on board or land at Dover, as well as at other British ports where they may be obliged to put in, any passengers of whatever nation they may be, with their wearing-apparel and luggage, and also with their horses and carriages, on condition that the captains of the said packets shall conform to the regulations of the United Kingdom concerning the arrival and departure of travellers. They shall be prohibited from conveying goods or merchandize on freight, with the exception, however, of postal packets and small parcels the weight of which shall be limited by mutual agreement between the two Offices.

#### ARTICLE XI.

The expenses which may be incurred for signals of every kind, and for the burning of Bengal lights upon the pier for the use of the steam packets, shall be borne both at Dover and at Ostend by the Belgian Government.

#### ARTICLE XII.

The captains of the packets specially engaged in the conveyance of the respective mails of the two Offices are forbidden to take charge of any letter not included in their mail bags, with the exception, however, of Government despatches.

They must take care that no letters are conveyed illegally by their crews or passengers, and must give information in the proper quarter of any breach of the laws which may be committed in that respect.

#### ARTICLE XIII.

In case of war between the two nations, the mail packets shall continue their navigation without impediment or molestation, until a notification is made on the part of either of the two Governments that the ser-

un autre port que celui où il doit aborder, le commandant fera immédiatement remettre les dépêches au bureau de poste de la localité, ou les acheminera vers leur destination, sous la garde d'un officier du bord.

#### ARTICLE IX.

Les canots qui seront nécessaires pour embarquer ou débarquer les dépêches, ou pour donner aide aux bateaux à vapeur à leur entrée ou à leur sortie, seront fournies à Douvres comme à Ostende par le Gouvernement Belge, et à ses frais.

#### ARTICLE X.

Les paquebots de poste pourront embarquer ou débarquer, tant à Douvres que dans les autres ports Britanniques où ils seraient contrainsts de relâcher, tous passagers, de quelque nation qu'ils puissent être, avec leurs hardes et effets personnels, ainsi que leurs chevaux et voitures, sous la condition que les commandants de ces paquebots se soumettront aux règlements du Royaume Uni concernant l'entrée et la sortie des voyageurs. Ils ne pourront transporter aucune marchandise à titre de fret, à l'exception toutefois des colis postaux et des articles de messagerie dont le poids sera limité de commun accord entre les deux Administrations.

#### ARTICLE XI.

Les dépenses que pourront occasionner les signaux de toute espèce, et l'allumage des feux de Bengale, sur la jetée, pour les bateaux à vapeur, seront supportées à Douvres comme à Ostende par le Gouvernement Belge.

#### ARTICLE XII.

Il est défendu aux commandants des paquebots spécialement employés au transport des dépêches respectives des deux offices de se charger d'aucune lettre en dehors de ces dépêches, excepté toutefois celles du Gouvernement.

Ils veilleront à ce qu'il ne soit pas transporté de lettres en fraude par leurs équipages ou par les passagers, et ils dénonceront à qui de droit les infractions qui pourraient être commises à cet égard.

#### ARTICLE XIII.

En cas de guerre entre les deux nations, les paquebots de poste continueront leur navigation sans obstacle ni molestation, jusqu'à notification de la cessation de leur service faite par l'un des deux Gouverne-



vice is to be discontinued, in which case they shall be permitted to return freely, and under special protection, to the port in Belgium where they were fitted out.

#### ARTICLE XIV.

The British Government engages to pay annually to the Belgian Government, in consideration of the advantages which it derives from the double daily packet service between Ostend and Dover, viz. :

1. For the night service, the sum of four thousand pounds sterling; and

2. For the day service the sum of five hundred pounds sterling.

These sums shall be paid quarterly to the Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of the Belgians at the Court of Her Britannic Majesty.

It is understood that the British Government shall be at liberty to terminate such payment on giving to the Belgian Government a notice of at least six months; and that even without such notice, the payment of either or both of the above-mentioned sums shall be lawfully discontinued at any time that the Belgian Government should cease to perform either a portion or the whole of the service.

#### ARTICLE XV.

The two Governments engage to cause to be conveyed, by the means which the respective Post Offices employ for their own business, the closed mails which one of the Offices may wish to exchange, through the medium of the other Office, with countries which are not parties to the General Postal Union.

The one of the two Offices on whose account this conveyance shall take place, shall pay to the Office performing this service, in consideration of the distance traversed beyond the limits of the Union, rates which shall be determined by mutual agreement between them, and which shall not exceed the rates to be determined for the despatch of correspondence in open mails, in conformity with Article XI of the Treaty of Berne, of the 9th of October, 1874.

#### ARTICLE XVI.

In order to secure the whole of the receipts upon the correspondence passing between the two countries, the British and Belgian Governments engage to prevent by every possible means the said correspondence being sent by any other way than by their respective Posts.

ments, auquel cas, il leur sera permis de retourner librement, et sous protection spéciale, au port d'armement en Belgique.

#### ARTICLE XIV.

Le Gouvernement Britannique s'engage à payer annuellement au Gouvernement Belge, en raison des avantages qu'il retire du double service quotidien de paquebots entre Ostende et Douvres, savoir :—

1°. Pour le service de nuit, la somme de quatre mille livres sterling; et

2°. Pour le service de jour la somme de cinq cents livres sterling.

Ces sommes seront acquittées trimestriellement, par quart, entre les mains de l'Envoyé Extraordinaire et Ministre Plénipotentiaire de Sa Majesté le Roi des Belges près de Sa Majesté Britannique.

Il est entendu que le Gouvernement Britannique aura la faculté de faire cesser ce paiement en prévenant de ses intentions le Gouvernement Belge au moins six mois à l'avance; et que même sans avis préalable le paiement de l'une ou de l'autre des deux sommes ou de toutes deux cesserait de plein droit du moment où le Gouvernement Belge viendrait à supprimer soit l'une ou l'autre partie du service soit le service tout entier.

#### ARTICLE XV.

Les deux Gouvernements s'engagent à faire transporter, par les moyens dont leurs Administrations Postales respectives disposent pour leurs propres relations, les dépêches closes que l'une des Administrations voudra échanger, par l'intermédiaire de l'autre, avec des pays étrangers à l'Union Générale des Postes.

Celle des deux Administrations pour le compte de laquelle ce transport aura lieu, paiera à l'Administration qui l'aura effectué, du chef du parcours en dehors de l'Union, des prix qui seront fixés de commun accord entre elles, et qui ne pourront excéder les prix à déterminer pour l'expédition des correspondances à découvert, conformément à l'Article XI du Traité de Berne, du 9 Octobre, 1874.

#### ARTICLE XVI.

Afin de s'assurer réciproquement l'intégralité des produits des correspondances de l'un pays pour l'autre, les Gouvernements Belge et Britannique s'engagent à empêcher par tous les moyens qui sont en leur pouvoir que ces correspondances ne passent par d'autres voies que par leurs Postes respectives.

## ARTICLE XVII.

The Post Offices of Great Britain and Belgium shall determine by mutual agreement, in accordance with the conditions laid down in the Treaty of Berne of the 9th of October, 1874, the matters of detail connected with the execution of the present Convention, as well as all other arrangements deemed necessary for regulating the postal regulations between the two countries.

## ARTICLE XVIII.

The present Convention, which abrogates and takes the place of all previous postal arrangements concluded between Great Britain and Belgium, with the exception of those relating to Post Office money orders, shall come into force immediately after the exchange of the ratifications.

It is concluded for an indefinite period, each party reserving to itself the right to terminate it at any time upon giving at least twelve months' notice to the other party of its intention in this respect.

## ARTICLE XIX.

The present Convention shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the present Convention, and have affixed thereto the seal of their arms.

Done in duplicate, at London, the seventeenth day of February, in the year of Our Lord one thousand eight hundred and seventy-six.

(L.S.) DERBY.  
(L.S.) JOHN MANNERS.  
(L.S.) SOLVYNS.

## ARTICLE XVII.

Les Administrations des Postes de la Grande Bretagne et de Belgique arrêteront, d'un commun accord, dans les conditions prévues par le Traité de Berne du 9 Octobre, 1874, les mesures d'ordre et de détail se rapportant à l'exécution de la présente Convention, ainsi que toutes autres dispositions jugées nécessaires pour régler les relations postales entre les deux pays.

## ARTICLE XVIII.

La présente Convention, qui abroge et remplace tous les arrangements antérieurs relatifs au service des postes conclus entre la Grande Bretagne et la Belgique, sauf ceux concernant le service des mandats postes, sera mise à exécution immédiatement après l'échange des ratifications.

Elle est conclue pour un temps indéterminé, chacune des deux parties se réservant la faculté d'en faire cesser les effets à toute époque, à la condition d'en donner avis à l'autre partie, au moins douze mois à l'avance.

## ARTICLE XIX.

La présente Convention sera ratifiée, et les ratifications en seront échangées à Londres le plus tôt possible.

En foi de quoi les Plénipotentiaires respectifs ont signé la présente Convention, et y ont apposé le sceau de leurs armes.

Fait à Londres, en double original, le dix-septième jour du mois de Février, l'an de grâce mil huit cent soixante-seize.

(L.S.) DERBY.  
(L.S.) JOHN MANNERS.  
(L.S.) SOLVYNS.





BELGIUM. No. 1 (1876).

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CONVENTION between Her Majesty and the King of the Belgians, regulating the Communications by Post between the British and Belgian Dominions.

*Signed at London, February 17, 1876.*

PRINTED BY HARRISON, 1876.

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*Presented to both Houses of Parliament by Command of Her Majesty. 1876.*

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CHINA. No. 1 (1876).

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CORRESPONDENCE

RESPECTING THE

ATTACK

ON THE

INDIAN EXPEDITION TO WESTERN CHINA,

AND THE

MURDER OF MR. MARGARY.

---

*Presented to both Houses of Parliament by Command of Her Majesty.*  
1876.

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Correspondence respecting the Attack on the Indian Expedition  
to Western China, and the Murder of Mr. Margary.

---

No. 1.

*The Earl of Derby to Mr. Wade.\**

Sir,

*Foreign Office, March 4, 1875.*

I HAVE to acquaint you that Her Majesty's Secretary of State for India has received a telegram from Lord Northbrook, informing him that intelligence has reached the Indian Government from Mandalay that the Mission under Colonel Browne has been attacked and driven back by an armed force, and that Mr. Margary and his servants have been killed at Manwyne. These acts are understood to have been committed by the orders of the Chinese Governor of Momein.

I have to instruct you to lose no time in calling upon the Chinese Government to institute a strict investigation into the facts thus reported, and to inform me of your opinion as to the steps which it would be advisable to take in the matter, bearing in mind the objects which the Indian Government had in view in sending the Mission under Colonel Browne to Yünnan.

I am, &c.  
(Signed) DERBY.

---

No. 2.

*The Earl of Derby to Mr. Wade.†*

Sir,

*Foreign Office, April 16, 1875.*

HER Majesty's Government have had under their consideration your telegram of the 24th ultimo, reporting the demands which you had made upon the Chinese Government in consequence of the attack on Colonel Browne's Mission and the murder of Mr. Margary.

Those demands were as follows:—

1. That a British officer should be present at the investigation to be held in Yünnan.

2. That fresh passports should be immediately granted for a new mission through Burma in case the Indian Government should wish to send one.

3. That the sum of 150,000 taels should be placed in your hands to be disposed of as Her Majesty's Government might see fit.

I have now to acquaint you that the two first demands are entirely approved; and that with reference to the third, Her Majesty's Government, having entire confidence in your discretion, presume that you had good grounds for the action you have taken in asking for a sum of 150,000 taels, but will await further explanations before expressing a more definite opinion on the subject.

I am, &c.  
(Signed) DERBY.

---

\* Substance telegraphed to Mr. Wade.

† The substance of this despatch was telegraphed to Mr. Wade on the 6th April.

## No. 3.

*Mr. Wade to the Earl of Derby.—(Received May 10.)*

(Extract.)

*Peking, March 12, 1875.*

YOUR Lordship will not have failed to receive from the India Office a copy of the telegram which reached me yesterday, to the effect that the expedition from Bhamo had been attacked at a place called Man-wyne, which is some way within the Chinese frontier, and that Mr. Margary had been either killed in the fight or subsequently murdered; I do not quite make out which.

The Viceroy of India informs me that a copy of the telegram had been forwarded to the Secretary of State.

I inclose copy of a despatch in which I have this day communicated the matter of the telegram to the Prince of Kung.

I have limited myself to such a statement of the facts as I conceive the telegram strictly to warrant, reserving all comment that the particular case, or the larger question of which I cannot but regard it as forming part, might seem to authorize, until I am in receipt of the Prince's reply.

## Inclosure in No. 3.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, March 12, 1875.*

IT was only on the 3rd instant that I wrote to inform your Imperial Highness of the safe arrival of Mr. Margary at Bhamo. It gave me pleasure to be able to add that Mr. Margary had been kindly received by the Chinese authorities, through whose jurisdictions he had passed.

I regret to have now to state that a telegram arrived last evening from the Viceroy of India to the effect that the expedition, which Mr. Margary was sent to accompany, having crossed the Chinese frontier, was attacked on the 22nd of February near a town some seventeen miles south-west of Sanda by a large body of Chinese and hill men, the advanced guard of a force of 3,000 men, sent forward by a high authority of Momein to annihilate the British party.

The latter, but a few persons in number, were of course unable to make head against such odds, but, although some were wounded and the whole of their baggage was taken, they all succeeded in reaching a place of safety near Bhamo, with the exception of Mr. Margary, who, with his Chinese attendants, was killed, whether during the attack or in cold blood I cannot exactly make out. In any case their heads were exposed on the walls of the town near which the expedition was attacked.

The attacking party was commanded by a nephew of Li-ssü-ta-ye, Chief Authority of Nan-tien. Li-ssü-ta-ye had shown Mr. Margary great civility but a short time before when he was passing through Nan-tien on his way to Bhamo.

The Viceroy has sent a duplicate of his telegram to the Secretary of State for India, who will, of course, communicate with the Secretary of State for Foreign Affairs.

Your Imperial Highness cannot doubt that I shall look anxiously for an acknowledgment of this communication.

(Signed) THOMAS FRANCIS WADE.

## No. 4.

*Mr. Wade to the Earl of Derby.—(Received May 10.)*

My Lord,

*Peking, March 12, 1875.*

WHATEVER details may be added to the telegram which forms the subject of the foregoing despatch, there can be no doubt, I fear, about the terrible fate of Mr. Margary. The regret which I could not fail to feel for the death of any one under circumstances so lamentable, is added to by the sincere conviction that in Mr. Margary the service loses one of the most promising of its staff. My personal knowledge of him was but slight, but I knew of him incidentally sufficient to assure me that no one would better accomplish the difficult mission for which I selected him, and his private letters forwarded me from time to time during his journey, either by Mr. Hughes or Mr. Medhurst, showed



me that I had not been mistaken in my choice. Whether in a Consular office or out of it, he was eminently a good servant, and I have known no one more generally popular with his colleagues or his countrymen.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

---

No. 5.

*Mr. Lister to Sir L. Mallet.*

Sir,

*Foreign Office, May 13, 1875.*

I AM directed by Her Majesty's Secretary of State for Foreign Affairs to transmit to you, to be laid before the Marquis of Salisbury, a copy of a despatch from Her Majesty's Minister at Peking upon the subject of the recent attack on the mission to Yünnan.\*

I am, &c.

(Signed) T. V. LISTER.

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No. 6.

*The Earl of Derby to Mr. Wade.*

Sir,

*Foreign Office, May 13, 1875.*

I HAVE received your despatch of the 12th of March, relating to the lamented death of Mr. Margary at Man-wyne, and I have to state to you that Her Majesty's Government share your regret at the loss of a public servant whose career promised so well.

I am, &c.

(Signed) DERBY.

---

No. 7.

*Mr. Wade to the Earl of Derby.—(Received June 6.)*

(Extract.)

*Shanghai, April 14, 1875.*

I HAVE the honour to inclose copies of my correspondence with the Prince of Kung and the Ministers of the Tsung-li Yamên, on the subject of the Yünnan outrage, as also of other papers connected with the same question. There is still a supplement to be supplied from Peking, with one or two documents that have been left behind by mistake.

My telegram of the 24th of March informed your Lordship that I had asked, first, for passports for the officers whom I might send to Yünnan, to be present at whatever proceedings should be had in this case; secondly, for passports that would enable a second mission from India, should the Viceroy see fit to send one, to cross the common frontier of China and Burma; thirdly, for an indemnity of 150,000 taels.

Your Lordship's despatch of the 6th instant, in reply to the above, reached this only on the 11th, the day after I arrived here. It acquaints me that my two first demands are approved, but that, while confiding in my discretion, Her Majesty's Government will await farther explanation of my demand for an indemnity.

I had already telegraphed, on the 26th of March, that I had made the accordance of passports a *sine quâ non*, and on the 31st of March that they had been sent to me. I reported also that I had not made a *sine quâ non* of the indemnity, but had only "recommended" it; that the Prince of Kung had offered, as a favour, that portion of the whole sum originally named by me, which I had told His Imperial Highness was allotted to the family of Mr. Margary, but that I had declined this offer, and had intimated my intention to abstain from all further reference to indemnity until I should receive instructions on the subject.

---

## Inclosure 1 in No. 7.

*The Prince of Kung to Mr. Wade.*

(Translation.)

THE Prince has to acknowledge the receipt of the British Minister's despatch of the 12th instant, informing him of the receipt of a telegram on the previous evening from the Viceroy of India, stating that the expedition proceeding to Yünnan had been attacked on the 22nd February, after entering Chinese territory, and that Mr. Margary, with his Chinese attendants, had been murdered.

It is but lately that the intelligence communicated by the British Minister, that Mr. Margary had safely arrived in Burma, after being treated with kindness by the officials along the entire course of his journey, had been received by the Prince with cordial satisfaction. On receipt of the present information that Mr. Margary has been cut off in this sudden manner, the Yamên of Foreign Affairs communicates at once by express with the Governor-General and Governor of Yünnan, desiring them without delay to order an inquiry to be instituted, and to make report of the result. The present reply is, in addition, forwarded for the information of the British Minister.

Kwang Sü, 1st year, 2nd moon, 7th day (March 14, 1875).

## Inclosure 2 in No. 7.

*Mr. Wade to the Prince of Kung.*

Sir,

Peking, March 15, 1875.

I HAVE the honour to acknowledge the receipt of your Imperial Highness' reply to my communication of the 12th.

The Viceroy of India, your Imperial Highness is aware, when he telegraphed to me, sent also a telegram to the India Office, and I cannot doubt that as soon as the Cabinet shall have had time to confer together, I shall receive instructions from the Earl of Derby. I shall not, therefore, for the present say more than that, with all there is on record of like offences insufficiently atoned for, the mere intimation of your Imperial Highness' intention to write express to a provincial Government from which no answer can be received for about six months, is not very likely to satisfy Her Majesty's Government.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

## Inclosure 3 in No. 7.

*The Prince of Kung to Mr. Wade.*

(Translation.)

THE Prince has to acknowledge the receipt of the British Minister's despatch of the 15th instant, expressing the opinion, with reference to the murder in Yünnan, that Her Britannic Majesty's Government is not likely to be satisfied with the mere assurance that orders to institute inquiry have been sent by express to a Provincial Government, from which no answer can be expected in less than half a year's time. In reply, the Prince has to observe that it was with a feeling of the utmost perturbation, so shortly after the receipt of a note announcing Mr. Margary's safe arrival in Burmah, that he learnt, by the despatch lately received, the news of his having been waylaid and murdered by an armed party. What is essential, at the same time, in cases of this kind, is that inquiry be instituted for the purpose of discovering the actual murderers, as well as of ascertaining the officials within whose jurisdiction the act has been committed, which having been done, rigorous punishment can be inflicted, as a warning for the future.

Immediately upon the receipt of the British Minister's despatch of the 12th instant, the Prince hastened to prepare a despatch, which was sent off on the 14th, at the urgent express rate of 600 li (200 miles) per diem, desiring the Governor-General and Governor of Yünnan to order an inquiry, and to reply without delay, the high officials in question being desired at the same time to devise with all promptitude the measures which it is requisite should be taken.

The Prince will never be found to deal negligently with so serious a matter as a case of murder; and, indeed, with reference to another affair, the Tsung-li Yamên have already heretofore remarked in a despatch addressed to the British Minister, that "if, in cases of homicide, the manslayer be set free on a verdict of 'Not Guilty,' it cannot be



possible to satisfy the public mind." It is because he himself is animated by a like sentiment that the Prince has with the utmost expedition despatched instructions to the authorities of the Province concerned, directing them to institute minute inquiry and effective proceedings as promptly as possible, to the end that no opportunity of escape be afforded to the murderers; and on receipt of the British Minister's further communication now under acknowledgment, additional instructions have been sent off by express to the high authorities of the Province. The Prince feels assured that Her Britannic Majesty's Government will not fail to share the conviction that, in dealing with this occurrence, the Prince will not cherish the slightest inclination to treat it negligently.

Kwang Sü, 1st year, 2nd moon, 10th day (March 17, 1875).

Inclosure 4 in No. 7.

*Mr. Wade to the Prince of Kung.*

Sir, Peking, March 18, 1875.

I HAVE the honour to acknowledge your Imperial Highness' reply of yesterday to my communication of the 15th instant, reminding me of the words employed in an earlier despatch by your Imperial Highness to the effect that the pacification of the public mind would be impossible were persons guilty of murder to be discharged as innocent.

These words, I remember, are to be found in a despatch regarding the Fawcett case, on which I have more than once explained that I had some further statements to make. My reason for delaying these will be given in due time, but as your Imperial Highness' allusion to the Fawcett case at this juncture may seem to imply that there is some parallel between it and the case just reported from Burma, I beg to state at once that there appears to me the very widest possible difference between the two. In the one a British subject, the employé of the Chinese Government, engaged in work on the Shan Tung Promontory for the Chinese Government, finding his workmen violently interfered with by Chinese of the locality, a collision ensued in which a shot from the foreigner's pistol, while he was striking one of the Chinese with the butt of the weapon, occasioned the death of another. In Momein a party of British officers travelling with a passport provided by the Chinese Government has been waylaid by an armed force, and one of them has been murdered and mutilated under circumstances which will not fail in England to recall the recollection of sundry acts of violence and treachery which have either interrupted or endangered relations between China and foreign Powers on various occasions, both before and after the Treaty of 1858. Who was responsible for the movement of the Momein force is, of course, the important point to determine.

An hour after the receipt of your Imperial Highness' despatch, I received a telegram from the Earl of Derby instructing me to inform his Lordship what steps, in my opinion, it will be advisable to take in this matter. When I have seen the Ministers who propose to call on me to-morrow, I shall have the honour of communicating again with your Imperial Highness.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure 5 in No. 7.

*Mr. Wade to the Tsung-li Yamén.*

Peking, March 19, 1875.

MR. WADE presents his compliments to the Ministers Shên, Mao, Tung, and Ch'ung.

To save time, Mr. Wade forwards a Memorandum of the subjects referred to to-day in Mr. Wade's conference with their Excellencies, and on which Mr. Fraser and Mr. Mayers will be instructed to speak to-morrow.

The Ministers mentioned to-day the Prince's intention to address a memorial to the Throne on the subject of the Momein affair. It is desirable that the draft of the Yamén should first be shown to Mr. Wade, and that both the Memorial and Decree be published in the "Gazette."

Mr. Wade takes this opportunity of insisting most positively on the necessity of a joint investigation. The course suggested by the Minister Tung, that is, that inquiry should be made, and punishment at once inflicted, will not satisfy Mr. Wade.

(Signed) THOMAS FRANCIS WADE.

## Inclosure 6 in No. 7.

*Memorandum forwarded to the Tsung-li Yamén, March 19, 1875.*

1. THE Chinese Government will send a special Commission to Momein to inquire into facts and causes of the attack on the expedition from Burma. No investigation or action taken upon it will be satisfactory unless a British officer is present to assist in the inquiry. I shall be prepared to send one or two officers. The Indian Government will be invited to send an officer if it sees fit.

2. The Indian Government will, if it see fit, send a second mission into Yünnan to carry out the objects contemplated by that which has been repulsed.

3. The sum of 150,000 taels will be placed in my hands, to be applied as the Secretary of State for Foreign Affairs and the Secretary of State for India shall decide.

4. The Prince of Kung will at once arrange with me what steps are to be taken to give effect to Article IV of the Treaty of 1858; the word privileges is explained in a note.

5. The Prince of Kung will also arrange with me how effect is to be given to the Articles of the Treaties by which the freedom of British trade from all imposts over and above the Tariff and half Tariff duty is secured.

6. The Prince of Kung will at once cause all claims arising out of the action of officials to be satisfied.

(Signed)

THOMAS FRANCIS WADE.

A Minister Plenipotentiary having presented his letters of credence at a foreign Court, and requested an audience, it is the duty of the Secretary of State for Foreign Affairs to ask the Sovereign of the State to grant the Minister Plenipotentiary an audience. The Secretary of State is not free to represent that the foreign Minister has "humbly implored" an audience. The audience granted, a notice of it is published in the "Government Gazette," in which the Sovereign of the Minister received is spoken of in such terms as to make it plain to all that there is no difference of degree between the Sovereign of the State and the Sovereign of the foreign Minister.

The reception over, the Minister is granted certain privileges; privileges of entrée, privileges of passage, and the like. On stated occasions he repairs to Court to pay his respects; he has formal intercourse with the chiefs of the Departments of State; not, of course, on business, but as a matter of ceremony.

## Inclosure 7 in No. 7.

*The Tsung-li Yamén to Mr. Wade.*

(Translation.)

AFTER their interview with Mr. Wade on the 19th instant, the Ministers received Mr. Wade's note enclosing a Memorandum, with the contents of which they fully acquainted themselves, and which they at once laid before the Prince of Kung for His Imperial Highness' perusal. They have in like manner fully communicated to His Imperial Highness the views which were stated on the part of Mr. Wade by Mr. Fraser and Mr. Mayers during the interview held at the Yamén on the 20th instant, deliberation having been held [by the members of the Yamén], they have drawn up the enclosed paper, replying article by article to Mr. Wade's Memorandum, which they forward for Mr. Wade's perusal.

With reference to the draft of the Yamén's Memorial to the Throne, respecting which Mr. Wade has addressed the Ministers on the 19th and 20th instant, it must be observed that in addressing Memorials to the Throne, the Prince and his colleagues of the Yamén act in fulfilment of the duty incumbent upon them. Memorials are documents under close seal and of a confidential nature. The more weighty and confidential the subject to which they relate, the less is it possible that Chinese Ministers who have not even shared in the [drafting?] of the matter should venture, before the document has been laid before the Sovereign, to submit it to the perusal of any foreign Representative. Whatever there may be in the way of an abstract of the general tenor of the Memorial, and of the Imperial Rescript issued in reply, that should with due reverence be communicated for information's sake, the Yamén will certainly make known in an official despatch. The Ministers forward this reply, with wishes for Mr. Wade's continued happiness.

2nd moon, 15th day (March 22, 1875).



## Inclosure 8 in No. 7.

*Memorandum from the Tsung-li Yamén*

(Translation.)

March 22, 1875.

[IN reply to Mr. Wade's Memorandum of the 19th instant.]

Article 1. The Prince and his colleagues are at one with Mr. Wade in viewing this occurrence as of a serious nature. The proper course to pursue is undoubtedly that the Governor-General and Governor of Yünnan should institute a searching inquiry into all the facts of the case through the agency of intelligent and judicious officials acting under their orders, and take action accordingly, having as the object imperatively in view a due and satisfactory result. If, for instance, an affair of serious import were to occur within the limits of British territory, it could be dealt with in an efficient manner by British officials only; and thus, in the present instance, it rests entirely with the Governor-General and the Governor to make every possible effort towards ensuring the discovery of the persons by whose hands the murder was actually committed, and to punish them in accordance with the laws. It is the law that a murderer shall pay the penalty with his life; and whether the British Government should appoint officials (to be present) or no, the Chinese Government will assuredly be possessed by no inclination to trifle with the settlement of the affair.

Art. 2. The original understanding [with reference to the Indian expedition] was that the purpose in view was travel. Nothing was said of any other objects; and the province, in fact, is not one of those comprising ports open to trade. Mr. Fraser and Mr. Mayers admitted, indeed, in the interview which was held [on the 20th instant], that the localities they mentioned are not Treaty ports, stating that [what was contemplated] was not that Consuls should be appointed, but merely that the Viceroy of India should appoint officials for the protection of traders, and interpreters be appointed by the British Minister to accompany them.

To this it must be urged in rejoinder, that no proviso exists [authorizing] foreign Governments to station officials in the interior of China; and that, [although] Yünnan is conterminous with the Kingdom of Burma, the Chinese Government has never by the terms of any enactment given sanction to trade carried on within the limits of a subject state. Moreover, the British Minister is the Plenipotentiary of his country in China, and it is obligatory on the Yamén of Foreign Affairs to transact with the British Minister, according to Treaty, all matters of business affecting the two countries which may at any time require attention.

Art. 3. With reference to the tenor of this Article, it was further explained by Mr. Fraser and Mr. Mayers that Mr. Wade proposed to allot 30,000 taels as indemnity for the murder of Mr. Margary; 30,000 taels for indemnity on account of other claims; and to hold the remaining 90,000 taels subject to decision as to the amount that may be demanded by the Viceroy of India, any surplus to be paid back to the Chinese Government.

Mr. Wade's own observation is that, in cases to be dealt with by the Chinese Government, it is the law of China that is to be applied, decision being formed according to the nature of the crime committed. Granting that in the case of Mr. Margary and those with him, who have respectively been put to death or wounded, the effects of the party may have been plundered, what must be done is to ascertain the actual particulars, and base an award of indemnity upon the value [of what has been lost]. This can scarcely be fixed *à priori*. Other claims unconnected with the question at issue should be dealt with on their own merits. It cannot be contended that the existence of the case which has now arisen justifies the indemnification of other claims, thus leading to no slight amount of entanglement.

Art. 4. Mr. Wade has further communicated, with reference to this Article, a Memorandum explanatory of diplomatic privileges. Owing to the difference which exists between Chinese and foreign usages (manners and customs), the forms of etiquette which should be observed in connection with the privileges of foreign Representatives, have been the subject of frequent discussion since the conclusion of the Treaties. A course of procedure was adopted, moreover, the year before last, in agreement between the Ministers of the five Powers and the Yamén of Foreign Affairs. The Ministers explained, in their interview with Mr. Fraser and Mr. Mayers, the actual nature of the circumstances by which they are at the present time debarred from making [other] arrangements, and of which Mr. Wade is himself thoroughly cognisant.

Art. 5. The matter referred to in this Article has been the subject of frequent conferences in times past, and the Yamén has already expressed its opinion on the subject in the fullest manner. With regard to this Article, as also to Article VI, the points at issue

should be dealt with on their respective merits, and there is nothing to require that they should be implicated within the scope of the present affair. [Their separation is necessary] in order that the threads of current business be kept distinct.

Inclosure 9 in No. 7.

*The Prince of Kung to Mr. Wade.*

(Translation.)

ON the 21st instant, the Yamên of Foreign Affairs memorialized the Throne, stating that the British Consular Interpreter Margary had been murdered on the frontier of Yünnan, and requesting the issue of a decree commanding Lin Yo-chao (Governor-General), add T'sên Yü-ying (Governor of Yünnan), to make appointment without delay of intelligent and judicious officials to proceed to the spot and institute effective inquiry and action, without the slightest approach to trifling with the affair. On the same day the following Decree was received:—

“The Yamên of Foreign Affairs memorializes, stating that a British Consular Interpreter has been murdered in Yünnan, and requesting that injunctions be issued for inquiry and action. The memorial states that in the course of the first moon of the present year (February, 1875), the British Interpreter Margary and his party were proceeding from Burma into Yünnan, when, at a town 50 li (17 miles) south-west from the seat of Government of the Shan Principality of Sanda, subject to the Prefecture of Yung-châng, they were attacked by troops in the service of Government and [Mr. Margary was] murdered. Let Ts'ên Yü-ying institute effective inquiry and action in this case. We likewise ordain that Lin Yo-chao do with all promptitude betake himself to his post,\* and co-operate with the Governor in selecting officials of intelligence and ability to deal with the matter as justice requires. Let there be not the slightest approach to trifling (or ambiguity) in the matter.”

The foregoing, having been reverently received, is communicated for the British Minister's information.

Kwang Sü, 1st year, 2nd moon, 15th day (March 22, 1875).

Inclosure 10 in No. 7.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, March 22, 1875.*

I RECEIVED this evening a despatch from your Imperial Highness, informing me that the Tsung-li Yamên had yesterday addressed the Throne on the subject of the murder of Mr. Margary, which I brought to your Imperial Highness' knowledge on the 12th instant.

The Imperial Decree which your Imperial Highness has done me the honour to communicate to me in the despatch under acknowledgment, instructs the Provincial Government to “ch'a pan” (hold inquiry and inflict punishment). Your Imperial Highness' despatch, and a Memorandum sent with it from the Ministers who called on me on the 19th instant, as a reply to one I had forwarded to their Excellencies the same evening, confirm my apprehension that the Chinese Government does not intend to wait until a British officer can reach the scene of the outrage.

I must beg your Imperial Highness' careful attention to the language of my despatch of the 18th, and of my note of the 19th instant.

The history of the past, as I have therein observed, obliges me to regard the presence of a British officer at the investigation as indispensable, and it is my duty once more to warn your Imperial Highness that I cannot report any inquiry satisfactory at which a British officer shall not have assisted.

There are various passages in the Memorandum of the Ministers of the Yamên in which the meaning of what I have said or written is shown to have been misapprehended. I shall reserve my explanations for a separate occasion. The particular object of this despatch is too important to admit of delay.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

\* The Governor-General is at present taking a *congé* in his native province, while returning to his post from a visit to Peking.



## Inclosure 11 in No. 7.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, March 24, 1875.*

I HAVE the honour to transmit officially to your Imperial Highness a copy, in English and Chinese, of the Memorandum which I laid before your Imperial Highness this afternoon at the Yamên.

I am sending a telegram to the Earl of Derby to inform his Lordship of the demands that I have made.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

## Inclosure 12 in No. 7.

*Memorandum.**Peking, March 24, 1875.*

IN the matter of the attack on the Indian Mission in Teng-yüeh-chow, and the murder of Mr. Margary, the course of action which Mr. Wade calls upon the Chinese Government to pursue is as follows :—

1. It being before all things essential that inquiry into this case be conducted as Articles XVI and XVII of the Treaty of Tientsin requires, the Prince of Kung is called on to promise that the Yünnan authorities shall be instructed to see that no one, whether official or private person, who may be charged either with directing or promoting the attack on the British officers and others travelling under passport through Momein, or with taking direct part in the murder of Mr. Margary, be put on his trial before the arrival of the British officer or officers who may be sent to assist at the investigation.

Mr. Wade is to be immediately furnished with passports for two officers and their attendants to proceed to Momein, either overland through China, or by way of Burma, as may be deemed convenient.

2. Mr. Wade is to be immediately furnished with a passport in the same form as that forwarded to him in July last, to enable a second expedition, should the Viceroy of India see fit to send one, to enter Yünnan by the same route as that prescribed to the expedition repulsed in February.

The Prince of Kung will write officially to Mr. Wade to state what further measures it is proposed shall be taken to insure the new expedition against molestation.

3. The Prince of Kung is called on to have placed in Mr. Wade's hands, or made payable to him on demand, the sum of 150,000 taels, to be applied, whole or part, to such purposes as Her Majesty's Secretary of State for Foreign Affairs and Her Majesty's Secretary of State for India, when in possession of the whole of the circumstances of the case, shall determine. Should the Secretaries of State decide that none of this money is to be accepted, it will be returned to the Chinese Government.

## Inclosure 13 in No. 7.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, March 25, 1875.*

IT appears that the Ministers who received Mr. Fraser and Mr. Mayers at the Yamên on the 20th instant have misunderstood the observation I instructed those gentlemen to make to the effect that if the Government of India saw fit to leave an officer at Yünnan-fu or at Tali-fu to watch the trade, I should be prepared, with the approval of Her Majesty's Government, to place an interpreter at his disposal.

The Government of India desiring to possess itself of information that might prove useful to the traders of the Province of British Burma, between whom and the Province of Yünnan there is, in times of peace, a considerable traffic, resolved to send a mission headed by an officer, who would be accompanied by three or four gentlemen. They were to make a tour through the Province and report upon the conditions of the trade.

When therefore I applied last summer for the passports, the Yamên was informed of the official character of this mission, and I stated that the passports were applied for, in the terms of Article IX of the Treaty, as for persons touring, not travelling for purposes of trade.

Though provided with passports from the Chinese Government they have been attacked in Chinese territory by a force sent from Momein, and one of their number has been barbarously murdered. I wished it to be understood that if the Government of India

saw fit to send a second mission under the same form of passport into Yünnan and were to direct it to remain there for a longer or shorter space of time as it might determine, it would be under Treaty at perfect liberty to do so, should this course appear to it essential to the accomplishment of the object of the mission.

The Ministers appear to have thought that I claimed the right to put Consuls in Yünnan.

Last summer when a misunderstanding with Japan appeared imminent, it is true that among the recommendations I confidentially submitted to the Tsung-li Yamên of measures calculated to propitiate the Western Powers, I included the suggestion that China should concede the right to foreign Powers to place Consuls in Yünnan and Ssu-chuan; but I particularly mentioned that all I suggested was the exercise of such a right only if it should appear convenient: that I suggested it because I thought that it would tend to diminish the chance of Romish missionary complications in those provinces; lastly, that I greatly doubted whether my own Government would elect, if it had the right, to place a Consul in either province.

The Yamên has erred through over-suspiciousness.

I had no intention, nor has the Government of India, of going beyond the Treaty in the matter of passport privileges; but the right to remain in the interior under passport can no more be denied to British subjects, official or non-official, than it is denied to the Romish missionary; and I must repeat what I said yesterday that if British subjects are molested, or their trade interfered with, as has been the case at Nan-chang, Kwei-chow-fu, and now in the Momein atrocity, the frequent presence of British officials at inland centres, to watch proceedings, on occasion it may be to remonstrate with the local authorities, in any case to report the facts, can hardly fail to become an indispensable necessity.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

Inclosure 14 in No. 7.

*The Prince of Kung to Mr. Wade.*

(Translation.)

THE British Minister spoke with the Prince on the 24th instant with reference to the murder of Mr. Margary on the frontier of Yünnan, handing in at the same time a Memorandum setting forth, in three separate clauses, the course of action [which Mr. Wade called on the Chinese Government to pursue]; and at a later hour on the same day the Prince received the British Minister's despatch, inclosing a Memorandum, which, on being attentively perused, is found to be in all essential respects the same with that handed in at the previous interview.

The Prince has to observe that, in the treatment of affairs in an amicable spirit by the two Governments, cases of such importance as that at present in question must necessarily be discussed and dealt with on both sides according to Treaty with due consideration of what is just and with a dispassionate mind. The Prince feels it incumbent upon him, therefore, to forward to the British Minister herewith a Memorandum of observations in reply to that received from him.

Kwang Sü, 1st year, 2nd month, 18th day (March 25, 1875).

Inclosure 15 in No. 7.

*Memorandum annexed to the Prince of Kung's Despatch of March 25, 1875.*

(Translation.)

WITH reference to the first clause of Mr. Wade's Memorandum it must be observed that the provisions of the XVIIth Article of the Treaty are confined to cases occurring at Treaty ports, where Consuls are stationed. In the present case it is right that steps be taken, as the British Minister intimates, in conformity with the sense of the XVIth Article of the Treaty. It has already been distinctly affirmed in the Memorandum forwarded to the British Minister on the 22nd instant that it is the duty of the Yamên to use the most determined and earnest efforts towards the effective discovery of the actual perpetrators of the crime committed, and to punish them according to law, as also that whether officials be deputed by the British Government or no, the Chinese Government will assuredly not be disposed to trifle with the case. The Prince [will] further write to the authorities of the Province of Yünnan that the action taken according to Article XVI of the Treaty must be of a due and satisfactory nature,



2. With regard to the application for the issue of fresh passports like those issued for purposes of travel in July last, the answer must be given that action must of course be taken under Article IX of the Treaty. On receiving from the British Minister a statement of the number of individuals [for whom passports are asked], in the same way as last year, the passport will be sealed and returned as before. Instructions will at the same time be dispatched to the Government of Yünnan, to adopt such precautionary measures as may be necessary to obviate the risk of harm.

3. With regard to the third clause of the Memorandum, as also to clause 3 in Mr. Wade's Memorandum of the 19th instant, respecting which it was stated by Messrs. Fraser and Mayers, at the interview held on the 20th instant, that 30,000 taels were asked as an indemnity for the murder of Mr. Margary, 30,000 taels in settlement of other claims, and the remaining 90,000 taels to be held subject to the disposal of his Excellency the Viceroy of India, a Memorandum in reply was returned on the 22nd instant, in which it is pointed out that, "as Mr. Wade himself has observed, in cases to be dealt with by the Chinese Government, it is the law of China that is to be applied." Granting that, in the case in question, the party have been plundered of their effects, it still remains necessary that the actual particulars be ascertained, after which compensation may be awarded accordingly. It cannot well be fixed *à priori*. The British Minister is requested, therefore, to refer to this statement already on record.

Inclosure 16 in No. 7.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, March 26, 1875.*

I HAD the honour to receive yesterday your Imperial Highness's reply to my despatch of the 24th, communicating the demands which I had felt it my duty to make in the matter of the Momein outrage.

I understand your Imperial Highness to state that there will be no difficulty about the issue of passports for a second expedition, should the Viceroy of India see fit to send one, in the same form as those sealed by the Tsung-li Yamên last year, and that orders will be sent to Yünnan imperatively directing that effective measures be provided for guarding against danger.

In regard to the indemnity, on the acceptance and distribution of which I have left it to Her Majesty's Government to determine, there is a confusion between my demand for this and my demand for the punishment of the persons who may be found guilty of the outrage in Momein, a confusion which, after my explanations of the 19th and the 24th instant, ought not, in my opinion, to have been looked for. However, on both subjects, the indemnity to be claimed of the Chinese Government, and the punishment according to Chinese law of the persons found guilty, I shall have time enough to make my meaning clear on a future occasion.

The demand foremost in importance of the three that I laid before your Imperial Highness is that a British officer shall be present at the proceedings which the Imperial Decree of the 21st has instructed the Government of Yünnan to appoint carefully-selected officers to institute.

It is not necessary that in this despatch I should re-enumerate the instances of treachery and atrocity of which in the last few years foreigners have fallen victims, either by the direct action or the culpable indifference of Chinese officials.

The consideration on which I have from the first laid stress is this, that experience of the past makes it impossible for a foreign Government to accept as satisfactory the result of proceedings which have not been watched by a foreign official. It is for this reason that I have insisted so earnestly upon the necessity of having a British officer present at the proceedings which the Imperial Government has directed to be instituted in Yünnan. As I told your Imperial Highness at the Yamên on the 24th, as compared with the satisfaction of this condition, the payment of 10,000,000 taels indemnity would be valueless. What I require is explicitly set forth in my statement of the first of the three demands laid before your Imperial Highness on the 24th, and I repeat most positively that if any person or persons, official or non-official, charged as principals or accessories with participation in the Momein outrage, be punished before an opportunity be afforded Her Majesty's Government of assuring itself, by the presence of a British officer, of the truth or falsehood of the evidence adduced on the trial of the accused, I shall feel it my duty to impress on Her Majesty's Government, in the most uncompromising terms, my conviction that no report that may be received of trial or punishment ought to be accepted as trustworthy. What further action it may be necessary in such a case to take, it will be for Her Majesty's

Government to decide; my course is perfectly clear. With your Imperial Highness' despatches before me, I dare not allow the loss of another moment. I inclose three passports, which I require that the Yamên should seal and return to me before the evening of the 29th instant. Should this demand not be complied with, I shall consider my relations with your Imperial Highness at an end. I shall place my Legation under the protection of the Representative of a friendly Power, and I shall myself withdraw, with my suite, from Peking, as soon as it shall become practically possible for me to take this step.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

Inclosure 17 in No. 7.

*Mr. Wade to the Prince of Kung.*

*Peking, March 26, 1875.*

MR. WADE, Her Britannic Majesty's Minister at Peking, issues the following passport:—

"Whereas, at the instance of the Viceroy of India, a passport under date 31st July, 1874, was issued by the British Minister, to enable a small party of British officers and others to cross the frontier from Burma into Yünnan, information has been received from his Excellency the Viceroy, that on the 22nd February, this party was attacked near Sanda, in the jurisdiction of Têng Yüeh T'ing, by a body of Chinese troops, under orders of the Momein authorities; and that a British officer belonging to the party having been decapitated, with his Chinese followers, their heads have been exposed on the walls of the town in or near which the act was committed.

"And whereas, in reply to a Memorial of the Tsung-li Yamên, praying that officers be sent to the spot to institute proceedings, and to take action, an Imperial Decree of the 21st instant, has instructed the Government of Yünnan to depute competent officers to take such steps as justice may require, the British Minister now issues a passport to

, an officer of Her Majesty's service, in order that he may immediately proceed, either overland or by sea, as may be found advisable, to the locality above indicated, to be present at the examination of any persons who may be brought to trial in this case.

"This is to inform all officers of the Chinese Government, to whom the passport may be exhibited, of the character and mission of the British officer holding it, and to invite them to afford him the protection which, on the part of the Chinese Government, the Tsung-li Yamên has promised; and in guarantee whereof the seal of the Yamên is affixed to this passport."

Inclosure 18 in No. 7.

*Mr. Wade to the Prince of Kung.*

*Peking, March 27, 1875.*

Sir,

I HAVE the honour to refer your Imperial Highness to my despatch of yesterday evening.

It is my duty to add that when the passports therein demanded are sent to me, I shall require with them a formal assurance in writing from your Imperial Highness that no person charged, whether as principle or accessory, either with having moved or caused to move the troops which attacked the British Mission in Momein, or with having directed or taken part in the murder of Mr. Margary, be put on his trial or punished before the arrival of the officer or officers to whom the passports in question are issued, for the purpose of enabling them to hear the evidence that may be taken for or against the accused. Without this engagement these passports will not be of the slightest value, and unless it be given I shall leave Peking whether the passports be sent me or not.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

Inclosure 19 in No. 7.

*Mr. Wade to the Prince of Kung.*

*Peking, March 27, 1875.*

Sir,

IN continuation of my despatch of the 26th instant, I have the honour to refer your Imperial Highness to the remark therein, that from the Memorandum inclosed to me on the 25th instant, there appeared to be some confusion between my demand for the punishment according to law of those who may be convicted of having taken part directly or indirectly in the outrages which have occasioned this correspondence, and my demand that



a sum of money be made payable to my order to be hereafter disposed of as Her Majesty's Government may decide. I repeat that the explanations I have already given are, in my opinion, sufficient to prevent misunderstanding of my meaning. However I will restate the case even more fully than before.

A party of British officers and others, to whom passports under the seal of the Tsung-li Yamên were issued last July, authorising them to pass from Burma into Yünnan, and to travel in China, were attacked on the 22nd February by a Chinese force in the sub-prefecture of Têng Yueh, otherwise Momein. My authority for this statement is a telegram from the Viceroy of India, who had received a telegram to this effect from the Chief Commissioner in Burma, a high officer of the Indian Government residing at Mandalay, capital of the kingdom of Burma.

From an observation made by one of the Ministers who called at the Legation on the 19th instant, it is evident that the Chinese Government is unacquainted with the relations between Burma and England; it is unaware that a large portion of Burma is a British province, and that, with the consent of the King of Burma, British officers of the Indian Government are stationed permanently at different points in his dominions for the surveillance of British interests. They are well acquainted with the language and people of the country, and their information is excellent.

In the telegram of the 2nd instant the Chief Commissioner in Burma states that the body who attacked the British party was but the advanced guard of a force of 3,000 men sent down by the Momein authorities to annihilate the British expedition. Of this, adds the Commissioner, there is not any doubt. He goes on to say that Mr. Margary was killed with his Chinese servants at a town called Man-yün (I am not sure of the Chinese characters used to write this name), and that his head and the heads of his servants were exposed on the walls of the town.

Mr. Margary, as your Imperial Highness is aware, was sent by me to meet this mission. Being thoroughly alive to the importance of having some one with the mission who, besides being acquainted with the Chinese language, was in other respects a competent agent, I specially selected Mr. Margary, a young man of great promise, for the service.

Since the arrival of the Viceroy's telegram announcing his murder, I have received, by way of Rangoon, a note written to me by Mr. Margary from Bhamo, dated the 18th January.

From this it appears that on reaching Momein he had found letters waiting for him from the Political Agent of the Indian Government stationed at Bhamo in Burma, informing him that the expedition would not be able to move forward quite so early as had been expected, and leaving it to him to wait for it at Momein or to come on as he thought best.

After some reflection Mr. Margary pushed on to Nan-tien and thence to Man-yün, at which place he found Li Ssü-tai engaged in an attempt to establish regulations for the trade of the tribes in the neighbourhood. From Man-yün he sent on his Chinese messenger Liu to Bhamo for instructions. Several days passed before Liu returned. During the whole of that time Mr. Margary remained at Man-yün, where he reports that Li Ssü-tai treated him with the greatest civility.

I draw particular attention to the fact of his friendly reception by Li Ssü-tai, and of his prolonged residence at Man-yün; because, according to the Chief Commissioner's telegram, it was by Li Ssü-tai's nephew that the attacking party was commanded on the 22nd February, and it is in or near Man-yün that Mr. Margary and his Chinese attendants were barbarously murdered.

I most distinctly protest, therefore, before any inquiry takes place, against all explanations attributing what has happened to misconception of the nature of the mission that has been repulsed. It consisted of a military officer, a medical man, an interpreter, and a civilian tourist without any official character—the four persons, in short, for whom the passports of July last were obtained. The Government of Yünnan was advised by the letter from the Yamên, which Mr. Margary carried with him, of the approach of the mission, and the direction it would probably take. The Governor of Yünnan sent officers with him as far as Yung Ch'ang. Mr. Margary passed a number of days at Man-yün in friendly intercourse with Li Ssü-tai, and the telegram announcing his arrival at Bhamo on the 17th January, which called for my letter of acknowledgments addressed to your Imperial Highness on the 3rd March, assured me (of course, on the testimony of Mr. Margary), that the Chinese officials in Yünnan were anxiously awaiting the mission.

It would be vain, in the face of these facts, to allege that the movement of troops by the Momein authorities was due to their alarms or suspicions.

And this brings me to the offences to be punished. There is, first, the attack on the Mission travelling under passport, and then the murder of Mr. Margary. The attack on the Mission is described by the Chief Commissioner in Burma as having been ordered by the Momein authorities. The authorities in this jurisdiction, as every one knows, are a general officer of the high rank of Tsung-ping and a sub-prefect. If the Tsung-ping or the sub-prefect, or both, gave orders for the attack upon the Mission without instructions from the Provincial Government, such an act, when followed by consequences so serious, as a late *cause célèbre* has shown, exposes the official responsible to the severest punishment.

If the movement of this force was ordered by the Government of Yünnan, the blame of the proceeding rests, of course, upon the latter as the superior authority of the Tsung-ping and sub-prefect.

In the matter of Mr. Margary's murder, it will similarly have to be established not only who committed the act, but by whose orders it was committed.

These are the offences for which I said Her Majesty's Government would look for no more than such punishment as the laws of China prescribe. The grand essential is a fair investigation, and at this it is imperative that a British officer should be enabled to assist.

My demand for an indemnity is entirely distinct from the punishment of the guilty persons, official or other, to whom I have just been referring.

As I explained to the Ministers of the Yamên when I first mentioned it, the sum I named was to be placed at my disposal for application, if Her Majesty's Government see fit, to the payment of an indemnity to the family of Mr. Margary; to the reimbursement of the Indian Government in the expenses of the Mission just repulsed, and of a second Mission, should the Viceroy of India see fit to send one into Yünnan; and lastly, to the liquidation of certain claims arising out of the acts or omissions of Chinese officials, settlement of which it has been found so far impossible to obtain.

The demand for the sum of 150,000 taels, I have verbally explained, was put forward to enable me, if the Chinese Government had yielded, to inform Her Majesty's Government by telegram that I had accepted this sum as sufficient to cover all pecuniary claims as against the Chinese Government. I also explained that if my other propositions, none of which I observed involved concessions lying beyond the limits of the Treaty, were also given effect to, the adjustment of what I knew would produce a startling outcry in England, would not fail to be facilitated.

As your Imperial Highness is aware, I have since informed Her Majesty's Government of the demand for indemnity laid before your Imperial Highness, and it remains to be seen whether Her Majesty's Government approve the amount I have named or the distribution of it I have suggested, or make demands of an entirely different nature.

When the officials of a Government are shown to have acted not once, but during a term of years, repeatedly, with treachery and ferocity towards the subjects of other Governments, it must rest with the latter, if their strength admit, to exact in a particular instance of the peccant Government such retribution as may at once atone for the past and make the future secure.

Whether Her Majesty's Government, in the case of a crime like that perpetrated in Momein, will be content to receive a money compensation at all; whether, if it be, it will regard the sum I have named as sufficient; or whether it will insist upon satisfaction in the form of fresh concessions, I shall not take on me to predict.

Your Imperial Highness will now, I trust, appreciate the motive of my reference to the subject of indemnity. But I repeat that it is entirely subordinate to my demand for such measures as will secure the identity of the persons guilty of the outrage in Momein, or their condign punishment. It is on the guarantee of the first condition that I have dwelt from first to last as before all other considerations essential, and if the means to this important end be not placed within my reach in the form and within the time prescribed in my despatch of yesterday, your Imperial Highness may rest assured that I shall pursue the course I have therein indicated.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

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Inclosure 20 in No. 7.

Mr. Wade to the Prince of Kung.

Sir,

Peking, March 27, 1875.

TO prevent any further confusion upon the subject on the part of the Tsung-li Yamên I write to state that the discussion earlier raised regarding the rights of the British Minister,



as declared in the closing sentence of Article IV of the Treaty of Tientsin, is a matter entirely distinct from the demands made in my despatches of yesterday and this morning, as demands non-compliance with which will involve a rupture of relations.

In a conversation with certain of the Ministers at the Yamên at the beginning of the new year I told them that the question was one respecting which great allowances had been made during the long minority which terminated in February 1873, and that the death of His late Majesty having rendered necessary a second minority, the duration of which could hardly be less than that of the first, it would be my duty on a fitting occasion to remind your Imperial Highness that the conditions of the Article quoted had never been fulfilled, and that the exaction of their fulfilment might at any time be open to Her Majesty's Government. I do not propose here to pursue the question farther. It is impossible that it should not one day be revived.

The essential requirement of the moment is the communication of the papers which I have asked for, if I do not receive which by the time I have specified, I shall act as I have stated I would.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure 21 in No. 7.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, March 27, 1875.*

TO prevent any farther confusion upon the subject on the part of the Tsung-li Yamên, I write to state that the discussion earlier raised regarding the rights of British merchants, as declared in Article XXVIII of the Treaty of Tien-tsin and elsewhere, is a matter entirely distinct from the demands made in my despatches of yesterday and this morning, as demands non-compliance with which will involve a rupture of relations.

In a conversation with certain of the Ministers at the Yamên at the beginning of the new year I told them that the question was one respecting which great allowances had been made during the long minority which terminated in February 1873, and that the death of His late Majesty having rendered necessary a second minority, the duration of which could hardly be less than that of the first, it would be my duty on a fitting occasion to remind your Imperial Highness that the conditions of the Articles referred to were very imperfectly fulfilled, and that the exaction of their fulfilment might at any time be open to Her Majesty's Government. I do not propose here to pursue the question farther. It is impossible that it should not very shortly be revived.

It is at the same time not to be confounded with the demands I have made regarding the Momein outrage.

The essential requirement of the moment is the communication of the papers which I have asked for, if I do not receive which by the time I have specified, I shall act as I have stated I would.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure 22 in No. 7.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, March 28, 1875.*

TO prevent the possibility of a misunderstanding on the part of your Imperial Highness as to the precise nature and extent of my demands in satisfaction of the outrage committed in Momein, I shall briefly re-state my case.

A small party of British officers and others entering Yünnan from Burma, with the full knowledge of the Chinese Government, central and provincial, and under passports furnished by the Tsung-li Yamên, has been attacked in the sub-prefecture of Momein by a body of Chinese troops, sent against them, according to the Chief Commissioner of the Indian Government at Mandalay, by the authorities of Momein, and one of their number brutally murdered.

After some correspondence and discussion with your Imperial Highness and the Ministers of the Yamên, I laid before your Imperial Highness, in a despatch dated 24th instant, three propositions, which were in sum as follows:—

1. That I should have passports for such officers as I might choose to send to Yünnan to be present at the trial of the persons charged in this case, such persons to be put on their trial after the arrival of the officers I send,

2. That I should have passports to enable a second mission from India, should the Government of India see fit to send one by the same route to visit Yünnan.

3. That I should have placed in my hands the sum of 150,000 taels, or an order for such a sum, to be hereafter applied as Her Majesty's Government might decide.

I received a reply to the effect that the travelling passport could be sealed and sent to me as soon as I furnished the names of the officers and other data, but that such indemnity only could be paid as might cover the duly-estimated loss of baggage and other articles sustained by the late mission. As to the despatch of British officers to the spot, your Imperial Highness observed, that it would be the duty of the Provincial Government of Yünnan honestly and energetically to make such inquiry as would possess it of the facts, to lay hands on the parties actually guilty of the murder, and to punish them as the law provides. Whether an officer of the British Government were sent forward or not, there was assuredly no disposition on the part of China to hush up the affair, or to close the affair by keeping back part of the truth.

The presence of a British officer at the investigation I had from the first declared to be the condition beyond all others important, and as every day's delay is now of the most serious consequence, on receipt of your Imperial Highness' reply as above, in which the concession of this important demand was evaded, I addressed your Imperial Highness my despatch of the 26th, and I supplemented it by a second despatch on the following morning.

The matter now stands thus:—Had your Imperial Highness seen fit to accede to the three propositions submitted in my despatch of the 24th, I should have pledged my Government, when the crime committed in Momein had been punished according to law, to demand no additional reparation.

As your Imperial Highness is aware, I have informed the Earl of Derby, by telegram, that these propositions have been laid before your Imperial Highness. Whether, if the indemnity I have named be refused me, there will be claimed the same or some other concession, it will be for Her Majesty's Government to determine. Until the term prescribed in my despatch of the 26th expire, I am prepared to accept it if your Imperial Highness offers it, and to pledge Her Majesty's Government to accept it as sufficient.

But the grand essential is the presence of a British officer at the proceedings to be had in Yünnan, and my course will be this.

If, within the time I have prescribed, your Imperial Highness sends me the passports and the communication I have asked for in my despatches of the 26th and the 27th, and at the same time agrees to place in my hands the sum of 150,000 taels, I shall telegraph to Her Majesty's Government that no farther demands in reparation of the Momein outrage should be made beyond the punishment according to law of the persons whose guilt may be established on the trial, at which the British officers sent by me are to assist.

Should your Imperial Highness, though still declining to accord the indemnity I demand, supply me with the papers above specified by the time appointed, I shall continue in relations with your Imperial Highness, but I shall at once proceed to Shanghai to request instructions as to what farther measure of reparation, whether in the form of indemnity or otherwise, I am to demand.

If by the time appointed I do not receive the papers required in my despatches of the 26th and the 27th, then, whether indemnity be promised or not, I shall break off relations with your Imperial Highness, and withdraw the Legation from Peking.

I have to add that if relations are broken off, I shall not renew them until I am directed by Her Majesty's Government to renew them, and that I shall urge Her Majesty's Government in the strongest manner to defer their renewal until the Chinese Government shall have made such additional concessions as will more effectually secure to Her Majesty's subjects and servants in this Empire the enjoyment unmolested of every legitimate right.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

P.S.—This despatch was being copied when the Ministers who, by your Imperial Highness' desire, came to see me to-day arrived. Nothing that has fallen from their Excellencies affects the decision I have already had the honour to communicate to your Imperial Highness. Their Excellencies will, of course, repeat what I have said to them, and I see no occasion for farther conference on the subject. If your Imperial Highness be willing to make the arrangement I have proposed to the Ministers, Mr. Mayers will proceed to the Yamèn to-morrow, at any hour that may be convenient, to withdraw the passport I inclosed in my despatch of the 26th instant, and to examine the draft of the despatch which your Imperial Highness desires to substitute for it. If your Imperial



Highness is determined not to yield this point, I feel it my duty, after all that has passed, to be on my side equally tenacious.

T. F. W.

Inclosure 23 in No. 7.

*The Prince of Kung to Mr. Wade.*

(Translation.)

WITH reference to the murder of the British interpreter, Mr. Margary, on the frontier of Yünnan, the Prince has to acknowledge the receipt of Mr. Wade's despatch of the 25th, his despatch of the 26th, and his four despatches of the 27th instant, all of which have been attentively perused. From the tenor of these several communications on the requirements of the case, it is apparent that the question of primary importance is that the officers to be named by Mr. Wade to proceed to Yünnan shall be present at the trial which is to be held in that province. It has already been declared by the Ministers of the Yamên, in their interviews with Mr. Wade, that this case [being] of a serious nature, it is agreed that the course above mentioned shall be followed, and that the Government of Yünnan shall be written to with directions that the officers now being sent to the province are to be allowed to be present at the trial of the case in question. Also that, as regards the passports to be used, they should be drawn up according to Treaty and to the precedent of last year. The further observations made by the British Minister, including a remark to the effect that, if the Prince had his difficulties, the British Minister must say the same, have all been brought by the Ministers to the Prince's knowledge. Subsequently to the interview in question, Mr. Wade's despatch of the same date was received, in which it is stated that if the Prince accepts the proposals made to the Ministers, Mr. Mayers could be instructed to call at the Yamên at any hour on the following day to withdraw the passports previously sent in, and to see the draft of the despatch to be forwarded on the Prince's part.

To reply in a concise but distinct manner, the Prince will now state that, in view of the extremely grave nature of the present case, he consents that the officers to be appointed by Mr. Wade shall be present at the trial of the case in question when held by the authorities of Yünnan. The passports to be given them shall be drawn up in accordance with Article IX of the Treaty, and with the precedents of former years, including that of July last, instructions being sent at the same time to the Governors of the different provinces to take action accordingly. If the British Minister will draw up passports in the form of those used last year, and send them to the Yamên, they shall be sealed and returned without delay.

The Prince is further willing to make a concession in this case beyond the limits [which may be considered due], that is to say, with reference to the question of indemnity put forward by the British Minister, he would consider the propriety of acting in the manner which the British Minister had suggested respecting the award of compensation to the family of Mr. Margary, as stated by Mr. Fraser and Mr. Mayers in their interview with the Ministers of the Yamên. No memorial to the throne or official report has, for the present, been received from the Government of Yünnan with reference to the affair in question; but the Prince, in his earnest regard for the friendly relations between the two countries, and profoundly grieving for the unhappy fate of Mr. Margary, is impelled to overstep the ordinary bounds and to propose this measure in advance [of the receipt of further information]. This done, the Prince's regard for what is due to the friendly relations subsisting between the two countries [will be seen to be] exerted to the uttermost. His earnestness in the treatment of the present case in the stage at which it has arrived [will be seen to] lack nothing of completeness. The extreme of consideration having been reached, and the utmost limit of just requirements attained, the mind need have no cause for self-accusation, and the sight of others may be freely faced.

The Prince forwards this communication in reply to the British Minister.

P.S.—If the British Minister agrees with the above, the Prince requests that, as already proposed, Mr. Mayers be sent to the Tsung-li Yamên to have a copy made from the drafts of the passports issued last year, filling in the names of the officers to whom they are to be given, and the number of individuals for whom they are required, the necessary steps being taken thereupon as previously agreed.

Kwang Sü, 1st year, 2nd moon, 22nd day (March 29, 1875).

## Inclosure 24 in No. 7.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, March 29, 1875.*

I HAVE the honour to acknowledge receipt of your Imperial Highness' despatch of this date.

The offer of indemnity therein made I beg most positively to decline. The whole question of indemnity must now be referred to Her Majesty's Government.

What I am prepared to do in the matter of the passports, Mr. Mayers will explain to the Ministers who receive him at the Yamên.

I renew, &amp;c.

(Signed) THOMAS FRANCIS WADE.

## Inclosure 25 in No. 7.

*The Tsung-li Yamên to Mr. Wade.*

(Translation.)

*Peking, March 29, 1875 (received 9 P.M.)*

WITH reference to the matters discussed this day, as His Imperial Highness the Prince has not yet returned to his residence, the Ministers have been unable to take his instructions. In any case, however, one or other of the two courses which were spoken of to-day shall positively be adopted, viz., either the Minister Superintendent of the Northern Ports shall be instructed to appoint an official to escort the officer who is to be appointed by Mr. Wade to proceed to Yünnan, in which event passports shall be given in the form laid before the Ministers by Mr. Mayers this afternoon, or else the passports sent in by Mr. Wade on the 26th instant shall be sealed and returned to him.

As time does not admit of the necessary steps being taken this day, the Ministers write the present note, and they will further address Mr. Wade on a determination being arrived at to-morrow.

The official replies shall be forwarded when time permits (or in good time,—time being allowed.)

## Inclosure 26 in No. 7.

*Mr. Wade to the Tsung-li Yamên.**Peking, March 29, 1875, 9 P.M.*

MR. WADE has the honour to acknowledge receipt of the note of their Excellencies the Ministers of the Yamên.

Mr. Wade begs to remind their Excellencies that the time prescribed in his despatches of the 26th and 27th expires at 12 to-night. As, however, he has received the note under acknowledgment he will request Mr. Mayers to wait on their Excellencies to-morrow at any hour they may name.

Mr. Wade has no new proposition to make. Mr. Mayers goes to the Yamên merely to prevent mistakes.

Mr. Wade, in conclusion, once more repeats that an essential point is that he should be furnished with the explicit assurance he has asked for.

## \* Inclosure 27 in No. 7.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, March 30, 1875.*

I HAVE the honour to refer your Imperial Highness to my despatches of the 26th and 27th instant.

In the first I stated that I required to have the passports inclosed forwarded to me duly sealed on the 29th instant. In the second I informed your Imperial Highness that, unless these passports should be accompanied by a despatch from your Imperial Highness formally assuring me "that no person charged, whether as principal or accessory, either with having moved or caused to move the troops which attacked the British mission in Momein, or with having directed or taken part in the murder of Mr. Margary, be put on his trial or punished before the arrival of the officers to whom the passports in question are issued for the purpose of enabling them to hear the evidence that may be taken for or against the accused."



Without this engagement, I added, these passports would not be of the slightest value.

On the 28th instant the Grand Secretary Shên and other Ministers came to the Legation to urge me to take back the passports I had sent to be sealed, alleging that your Imperial Highness made difficulty about sealing passports in the form of these. I was, therefore, requested to substitute passports in another form. The Ministers declined to give me any reason for the proposed alteration, except that your Imperial Highness desired it. Nevertheless, after some consideration, I did on the 29th instant, withdraw from the passport all the matter to which your Imperial Highness was understood to object, and Mr. Mayers was sent yesterday to the Tsung-li Yamên with a new draft simply stating that the bearers were on their way to Yünnan by my desire for the purpose of being present at an enquiry into the murder of a British officer. Mr. Mayers was instructed at the same time to press for the appointment of a Chinese officer who should accompany those I proposed to send to Yünnan.

There being no time after this Conference to prepare the passports so that they might be sealed within the time prescribed in my despatch of the 26th instant, I agreed to accept a note or message, which was to be sent me in the course of the evening, as sufficient, if it promised fulfilment of my conditions.

At 9 last night a messenger from your Imperial Highness' residence brought a note from the Grand Secretary Shên and his colleagues to the effect that I should certainly have the passports, either in the form I at first proposed, or in the revised form proposed yesterday, and that your Imperial Highness' despatch would be sent me "all in good time."

I replied reminding their Excellencies that the time I had prescribed would expire by midnight, but that having received their note I would send Mr. Mayers to the Yamên to-day at any time their Excellencies might please to name.

I beg now to observe that I have made the alteration your Imperial Highness desired in these passports to oblige your Imperial Highness. I have recommended the appointment of a Chinese official to accompany the bearers, not only as a provision for the efficacious protection guaranteed by the Treaty, but as a special security against further complication of the particular case I am now dealing with. It formed, however, no part of my original proposition, and if consideration of it is to involve further delay in the transmission of the passports and despatch demanded in my communications of the 26th and 27th instant, I withdraw it. The Chinese Government is responsible for the security of the officers proceeding under passports to Yünnan.

What is absolutely indispensable is that I should be supplied, without further loss of time, with the papers above demanded. I must positively decline to wait the indefinite length of time suggested by the Ministers' note of last night, and I must request your Imperial Highness to have forwarded to me by 12 o'clock this evening the following papers:—

1. Two passports for the officers sent to be present at the trial, either those inclosed in my despatch of the 26th instant or those I now inclose, which are in the form communicated to the Ministers who received Mr. Mayers at the Yamên yesterday.

2. The passports sent herewith in duplicate for a new mission from India should the Viceroy of India see fit to send one.

3. The despatch which, in mine of the 27th instant, I stated I should require, assuring me that no one should be punished till the officers sent by me should have had an opportunity of hearing the evidence against him, and without which, I stated in my despatch of the 27th instant, the passports to the officers I am sending to assist at the investigation in Yünnan, would be valueless.

As I have promised to send Mr. Mayers to the Yamên, he will proceed thither at the hour the Ministers may appoint; but I cannot consent to further discussion either in conference or correspondence regarding these demands, and if they be not sent me by the hour I have named I shall assume that the Chinese Government is trifling with me, and I declare most positively that my relations with the Tsung-li Yamên will be broken off accordingly.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

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Inclosure 28 in No. 7.

*Passport for British Officers proceeding to Yünnan to be present at the Trial.*

MR. WADE, Her Britannic Majesty's Minister in Peking, issues the following Passport to ——— British officers proceeding by his desire to Yünnan for the purpose of being

present at the trial of persons charged with the murder of a British officer in that province:—

This is to request the Governor-General of Yünnan, and the High Authorities of any other provinces through which the officers above mentioned may have to pass, to give orders to their subordinates in charge of the frontier passes or elsewhere to treat them with civility, and to assist them on their way with all speed.

Dated

Stamped with the Seals of Her Britannic Majesty's Minister at Peking and of the Yamên of Foreign Affairs.

Inclosure 29 in No. 7.

*Passport for future Expedition from India.*

MR. WADE, Her Majesty's Minister at Peking, has received an intimation from the Viceroy of India to the effect that officers of his Excellency's Government are about to pass from <sup>Burma to China</sup><sub>China to Burma</sub> with a certain number of followers. The officers in question may return by the way they came, or may proceed by way of the Great River to Shanghai.

This is to request the Governor-General of Yünnan, and the High Authorities of any other provinces through which the officers above mentioned may have to pass, to give orders to their subordinates in charge of the frontier passes or elsewhere to treat them with civility, and to assist them on their way with all speed.

Their names and the names of their attendants are given below.

Dated 1875.

Stamped with the Seals of Her Britannic Majesty's Minister at Peking and of the Yamên of Foreign Affairs.

Inclosure 30 in No. 7.

*Minute of Mr. Mayers' Visit to the Yamên, March 30, 1875.*

March 30, 1875 (2nd moon, 23rd day).—Mr. Mayers called at the Yamên and saw the same Ministers as yesterday, with the addition of Hsia.

His Excellency Shên stated that the Prince had decided to follow the alternative course proposed, viz., to grant the passports called for in Mr. Wade's despatch of yesterday, and to appoint an officer to proceed accordingly with Mr. Wade's delegates to Yünnan.

Mr. Mayers delivered the purport of his instructions, laying particular stress on the necessity of a distinct assurance being given officially with the passports that no conclusive trial and punishment of the persons accused in this case shall be carried into effect before the British officials are enabled to be present at the proceedings.

Inclosure 31 in No. 7.

*The Prince of Kung to Mr. Wade.*

(Translation.)

THE Prince has received the British Minister's despatch of this date, inclosing four passports to be stamped, of which two are intended for officers whom the British Minister will appoint to proceed to be present at the trial held in connection with the murder of Mr. Margary in Yünnan, and two are provided for use in the event of a further expedition being sent by his Excellency the Viceroy of India, to proceed either from Burma to Yünnan or by way of Yünnan into Burma.

The Tsung-li Yamên has affixed its seal to each of these passports, and they are forwarded herewith to the British Minister. The three passports which were sent in on the 26th instant are consequently at the same time returned.

As regards the trial and punishment to take place for the murder of Mr. Margary in Yünnan, the British Minister has required in his despatch of the 27th instant, that "no person charged, whether as principal or accessory, either with having moved or caused to move the troops which attacked the British mission in Momein, or with having directed or taken part in the murder of Mr. Margary [shall be allowed to] be put on his trial or punished before the arrival of the British officers who are to be despatched to the spot." In reply, the Prince of Kung has to state that, with reference to this case, the Tsung-li



Yamên has received in reply to its Memorial an Imperial rescript, commanding the Government of Yünnan to institute effective inquiry and action in the matter, as has already been communicated to the British Minister. On receipt of this Imperial command, the Government of Yünnan will necessarily act in reverent obedience, and proceed without delay with an inquiry and judicial investigation. The Tsung-li Yamên is for the present in receipt of no reply from the Government of Yünnan, informing it whether [the persons accused] have been placed on trial. Be this as it may, however, whether the parties concerned as accused or as witnesses have already been brought before a Court for examination or no, the Prince of Kung expressly declares that, when the time has arrived for the final decision of the case, the officers whom the British Minister is about to appoint for the purpose shall assuredly be present to watch the proceedings, in order to insure the integrity [of the action taken] and to guard against culpable leniency [in the treatment of guilty parties].

The Tsung-li Yamên has written to the authorities of Yünnan, in addition to which the present reply is forwarded to the British Minister.

Kwang Sü, 1st year, 2nd moon, 23rd day (March 30, 1875).

Inclosure 32 in No. 7.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, March 31, 1875.*

I HAVE the honour to acknowledge your Imperial Highness' despatch of last evening, inclosing the four passports I had required, and conveying to me your Imperial Highness' positive assurance that the officers I am about to send to Yünnan shall be present at the trial of any persons charged with participation in the outrage which has occasioned this correspondence.

In a note received on the night of the 29th instant from the Grand Secretary Shên and his colleagues, it was stated that the Minister Superintendent of Trade for the Northern ports would be called on to send an officer with those for whom I have obtained passports; and in a telegram sent this day to the Foreign Office I have stated that they would be so accompanied.

I should be obliged to your Imperial Highness to lose no time in communicating with the Minister Superintendent, and to inform me how soon the officer his Excellency may select will be ready to proceed, in order that I may give the necessary directions.

I proceed myself to Shanghae for this purpose upon the 3rd April.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

No. 8.

*Mr. Wade to the Earl of Derby.—(Received June 6.)*

(Extract.)

*Shanghae, April 15, 1875.*

IN my despatch to the Prince of Kung of the 30th of March, I have referred to a letter received by me from Mr. Margary. Omitting a few observations which would only have been made to me confidentially, I have had a copy taken of this letter, which I have now the honour to forward to your Lordship.

Inclosure in No. 8.

*Mr. Margary to Mr. Wade.*

(Extract.)

*Bhamo, January 18, 1875.*

HAVING reached Bhamo in plenty of time to join the expedition, I take the liberty of reporting my movements direct to your own hands. The last occasion on which I was able to communicate with Hankow was from Yung-ch'ang-fu, on the 29th December. After that I travelled on to Têng-yueh, and there received a packet of letters forwarded by Captain Cooke, who is our Political Agent at Bhamo, informing me that the expedition was not to start till the middle of January, and directing me to join it at the latter place if it seemed practicable to do so. Captain Cooke himself recommended my awaiting its arrival at Têng-yueh, but left me free to do as I thought best. As there were only seven stages between Têng-yueh and Bhamo, and four of these lay through the level plains of the Shan Principalities, over which there was no impediment to rapid marching, I was

able to carry out a plan of co-operation which has thoroughly succeeded. Instead of waiting at Têng-yueh, I was at all events justified in pushing on to Nan-tien, where the various routes converged; and there was no danger in going further still up to Man-yün (or Manwynne), whence I could fall back in two days, if I heard of the approach of the party, information being readily procurable. Accordingly I sent my very excellent messenger Liu (a man whom Mr. Medhurst kindly spared for my use), with all speed to Bhamo, whence he was to return and bring me definite instructions at Man-yün, whether to proceed or fall back. Liu reached Bhamo in six days, and was sent back with a Burmese guard of 40 men to conduct me over the Kakhyen hills. I had travelled leisurely on through the lovely valley of the Paiji (Shans), picking up information, and learning what I could of their language, and after a very delightful stay among these amiable people, crossed the savage territory with my queer escort, and reached Bhamo only two days after the arrival of Colonel Browne and Dr. Anderson. It was a delightful sensation meeting with a warm reception from such distinguished fellow-countrymen, and I was overwhelmed with congratulations on having carried out so splendid a journey. The English steamer which brought up Colonel Browne had been delayed nearly a fortnight by sticking on sandbanks, so that the expedition has not been able to start yet, and I have a prospect of perhaps ten days' rest before resuming the journey.

As for my own disbursements, I feel pretty confident of keeping well within the limit of 2,000 dollars, in spite of this extra bit tacked on to my journey. Everything has gone well. The Acting Viceroy of Hunan, Shên Tu-jên, has helped me through with the most thorough hospitality and friendliness. He not only deputed two Wei-yuans of respectable rank to conduct me to Yung-ch'ang-fu, but sent such weighty instructions along the route that all the mandarins have felt constrained to show me every respect and the highest honours. I have only to except one official from this unreserved commendation. The Prefect of Yung-ch'ang was pointedly rude. I have had most successful interviews, and met with kindness and civility throughout. It is not possible to give you a more detailed account in a hurry, for I am writing against time and the steamer's departure. But I have certainly been able to drop good seeds of amity and to remove false impressions along the route. A very appreciative disposition exists towards the English.

The famous Li Chen-kwo (*alias* Li Ssü and Li Hsieh-tai), who attacked the Sladen expedition, and has been called a brigand and other hard names, turned out to be an exceedingly courteous, intelligent, and straightforward man. He has done everything to facilitate the advance of the expedition, and treated me with unexpected civility, even to the act of the Ko-t'ou. He was at Man-yün with a special Commission to try and effect a Treaty with the savage Kakhyens, and to establish a regular system of tariff, and fixed stations for its collection, in lieu of the very irregular and vexatious black mail now levied by these lawless hill men on the mule caravans. He was daily surrounded by a large conclave of savage chieftains and prominent townsmen discussing the subject from morning till night. He told me that the matter had yielded a tou-hsü at last. My Chinese have behaved excellently well. I hope to write again before we start; in the meantime, I shall remain, dear Sir, in the firm hope of having gained your approbation.

#### No. 9.

*Mr. Wade to the Earl of Derby.—(Received June 6.)*

My Lord,

*Shanghai, April 16, 1875.*

SOME expressions of a doubt have reached me as to the extent to which the authority of the Chinese Government is recognized in the country in which Colonel Browne's Mission was attacked.

The city spoken of from the western side as Momein is the chief city of the Chinese sub-prefecture of T'êng-yüeh-t'ing, the residence of the sub-prefect, and a military officer styled "Tsung-ping," a title generally translated as General of Division. The latter has of course his own division under him, and is, besides, chief authority over the tribes in the vicinity, who recognize the Emperor of China as their suzerain.

I inclose translation of a Memorial from the present Governor of Yünnan, after the suppression of the Panthai rebellion, from which it will be seen that the Government of China claims full power over these tribes, whether in respect of control or protection. Its relation to them is precisely the same as that entertained by it to many wild highland races in the heart of the Empire, notably to those on the borders of Kwang-si, Hu-nan, Kwei-chow, and the inland frontier of Yünnan.

It is noteworthy that the Prince of Kung in his late correspondence with me has



nowhere attempted to deny the ability of the Chinese Government to do its duty as a Government in the country in question.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure in No. 9.

*Extract from the "Peking Gazette" of August 20, 1873 (12th year of Tung Che, 7th moon, 4th day).*

(Translation.)

CHINESE JURISDICTION IN THE SHAN STATES OF SOUTH WESTERN YÜNNAN.—The Governor of Yünnan, Ts'ên Yü-ying, memorializes as follows:—

With reference to the Chieftains of the following territorial divisions, subject to the Prefecture of Yung Ch'ang, viz.:

|                                   |
|-----------------------------------|
| The Shan Prefecture of Mêng-ting. |
| The „ Department of Wan-tien.     |
| The „ Department of Chên-k'ang.   |
| The „ Tsaubwaship of Ts'ien-yai.  |
| The „ „ of Lung-ch'wan.           |
| The „ „ of Chê-fang.              |
| The „ „ of Sanda.                 |
| The „ „ of Lu-kiang.              |
| The „ „ of Mang-she.              |
| The „ „ of Nan-tien.              |
| The „ „ of Mêng-mow.              |

The Directorship of Latha and the following divisions, subject to the Prefecture of Shun-ning, viz.:

|                                      |
|--------------------------------------|
| The Shan Tsaubwaship of Kêng-ma; and |
| The „ „ of Mêng-lien.*               |

It has to be represented that the region of country they occupy is of very wide extent, in immediate contiguity to the barbarians of Burma. Since the outbreak of the rebellion, some among these have sacrificed their all to relieve the necessities of the State, or have fallen in battle against the insurgents. Some have been compelled by the rebels to yield them suit and service; and in the case of others, the legitimate branch has been overthrown through the machinations of members of the family, who have declared themselves invested with the functions of government as vicegerents. In many cases the seals of office and warrants of title have disappeared, and the barbarian multitude know not where to look for authoritative guidance.

It is of urgent importance, now that peace has been established, to restore matters generally to a footing of order, to the end that ease and tranquillity may prevail throughout the frontier region. Your servant has now taken action, with his subordinates the Prefects of Yung-ch'ang and Shun-ning under his command, to summon a general assembly of the native Chiefs, and to institute a detailed investigation, applying for rewards on behalf of those who have most highly distinguished themselves in the offensive or defensive operations against the rebels, and preparing a return of those who have fallen in action or have otherwise sacrificed their lives on behalf of the State, to be submitted to the Throne with requests for tokens of Imperial sympathy.

In the case of any who may be entitled to hereditary Chieftainships, the Governor will consult with the Governor-General with reference to the address of applications to your Majesty for confirmation of the succession. Where seals and warrants of title are missing, a re-issue will be applied for. Should there be any who continue to show themselves hardened in iniquity, steps will be taken to sweep them from the face of the earth.

The Governor, whilst not venturing to take rash and unwarrantable action, will equally feel it his duty not to show a culpable leniency in countenancing evildoers. By such means authority may be restored to vigour, and the barbarians of the marshes be

\* In the renderings given above, the comparatively well-known Burmese designation "tsaubwa" is employed for the equivalent high-sounding titles, of two or three different degrees, conferred on chieftains of the Shan States. The three first on the list are organized on the departmental system of the Chinese Empire, as part of the regular provincial administration.—W. F. M.

impressed with a feeling of awe, in fulfilment of your Majesty's desire for the prevalence of law and order along the frontiers of the Empire.

No. 10.

*Mr. Wade to the Earl of Derby.—(Received June 6.)*

(Extract.)

*Shanghai, April 17, 1875.*

JUST before leaving Peking I again addressed the Prince of Kung on the appointment of an officer to accompany those who might be sent by me to assist at the investigation to be held in Yünnan. I informed His Imperial Highness that my officers would be ready perhaps on the 25th, and not later than the 30th of March.

When passing through Tien-tsin I instructed Her Majesty's Consul, Mr. Mongan, to wait upon the Governor-General Li, as he was the authority who, the Prince had decided, was to choose the Chinese officer about to proceed, and to remind his Excellency, as I had already reminded the Prince, that the officer in question went not to take part in the inquiry, but simply as an additional guarantee for the safety of the British officers travelling under passports.

The Governor-General, who was prevented by the State mourning from leaving his Yamên, received Mr. Mongan very courteously, and entered at some length into a consideration of the routes by which his officer and mine were to proceed, and I received last evening a despatch from the Prince of Kung, translations of which I inclose. It contains all the assurances I could desire regarding the relations of the officer selected by the Governor-General to the mission I am to send. I know the man by repute, and have a good opinion of his intelligence.

The Prince's despatch inclosed is really a reply to that from me, to which I have above referred. Copy of the latter shall be forwarded as soon as it is received from Peking.

Inclosure in No. 10.

*The Prince of Kung to Mr. Wade.*

(Translation.)

THE Prince has to inform the British Minister that a note was received on the 4th instant from the Minister Superintendent of Trade for the Northern Ports to the following effect :—

“With reference to the case in connection with the murder of the British Interpreter, Mr. Margary, in which an official is to be appointed by this provincial Government to accompany the British officers who are to proceed to Yünnan to be present at the trial, I am of opinion that Sung Pao-hwa, a Prefect by rank, decorated with a peacock feather, and at present acting in the office of Maritime Sub-Prefect of Tien-tsin, as a man of a certain degree of intelligence, is a fit person for the discharge of this duty. I have instructed him to proceed at once by steamer to Shanghai, and to make arrangements with the officers to be nominated by his Excellency Mr. Wade with reference to the journey. He will call upon the local authorities along the line of route to afford efficient protection. His position will be that of delegate accompanying the British officers, but with no voice in the proceedings connected with the case to be brought to trial.”

The Prince transmits the foregoing, accordingly, for the information of the British Minister.

Kwang Sü, 1st year, 3rd moon, 1st day (April 6, 1875).

No. 11.

*Mr. Wade to the Earl of Derby.—(Received June 6.)*

My Lord,

*Shanghai, April 17, 1875.*

I HAD been unable to identify the town of Man-wyne, the scene of Mr. Margary's murder. Mr. Medhurst has drawn my attention to an account of embassies exchanged between China and Burma which was republished in the “Chinese Repository” for November 1840, from the journal of the Asiatic Society of Bengal. The account was prepared by Colonel Burney, formerly resident at Ava; from the itinerary appended to the Burmese



Envoy's report of a mission sent in 1833, it appears that Man-wyne, there spelt Mó-wún, is the Chinese city of Lung-chuen-fu, a prefecture, or department, of the Province of Yünnan. In the language of the Shan tribes it is called Mung-wan. (See "Chinese Repository," vol ix, page 473.)

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

## No. 12.

*Lord Tenterden to Sir L. Mallet.*

Sir, *Foreign Office, June 16, 1875.*  
I AM directed by the Earl of Derby to transmit to you, to be laid before the Marquis of Salisbury, the accompanying printed correspondence relating to the attack upon the Yünnan mission and the murder of Mr. Margary.

Mr. Wade's proceedings, as reported in his despatches of the 14th, 15th, 16th, and 17th of April, have been approved, and I am to request you to move Lord Salisbury to favour Lord Derby with his views as to the despatch of a fresh mission to Yünnan, and as to any indemnity which his Lordship may consider to be due to the Indian Government for the failure of the late expedition.

I am, &c.  
(Signed) TENTERDEN.

## No. 13.

*The Earl of Derby to Mr. Wade.*

Sir, *Foreign Office, June 16, 1875.*  
I HAVE received and laid before the Queen your despatches of the 14th, 15th, 16th, and 17th of April, respecting your proceedings in regard to the attack upon the Yünnan mission and the murder of Mr. Margary, and I have to acquaint you that your conduct is approved of by Her Majesty's Government.

The questions as to the demand for compensation from the Chinese Government, and the despatch of a fresh mission to Yünnan, are under consideration, and instructions will be sent to you as soon as a decision has been taken upon them.

I am, &c.  
(Signed) DERBY.

## No. 14.

*Mr. Wade to the Earl of Derby.—(Received June 21.)*

My Lord, *Shanghai, May 1, 1875.*  
I HAVE the honour to forward your Lordship translations of two despatches, dated 14th April, which I have received from the Prince of Kung, and copy of my reply.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

## Inclosure 1 in No. 14.

*The Prince of Kung to Mr. Wade.*

(Translation.)

ON receipt of the British Minister's despatch of the 12th of March, respecting the murder of Mr. Margary on the Yünnan frontier, the Yamèn of Foreign Affairs, on the one hand, wrote with the utmost despatch to the Governor-General and Governor of Yünnan to order an inquiry to be instituted and report to be made with all promptitude, and, on the other, addressed a special Memorial to the Throne, in reply to which a Decree was received, ordaining inquiry and action in the matter. Replies were at the same time addressed to the British Minister. These proceedings were actuated by [a desire] to give due weight to [the treatment of] a case of murder, and to maintain unimpaired the relations [between the two] countries. Properly speaking, the correct course to pursue was to

await the Memorial in which the Government of Yünnan would, in obedience to the Imperial Decree, have reported the actual circumstances of the case, and thereupon to address a communication to [the British Minister] and discuss the consequent arrangements. The British Minister, however, with an urgency admitting no delay, addressed communications to the Prince with reference to the whole of the proceedings to be taken in the matter, on the 22nd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, and 31st March and the 2nd April, to the number of fourteen in all. Whilst the Prince, on his part, had received no report from the provincial Government of Yünnan, distinctly setting forth the actual causes of the collision, the British Minister, on the other hand, was pressing him day after day with an extreme degree of urgency, and he was consequently, for the moment, unable to return a detailed categorical reply. He now feels it his duty to communicate answers to those portions of the despatches received to which it is necessary that rejoinder should be made, in addition to the replies already forwarded to the British Minister on successive dates. These are appended, Article by Article, below for the British Minister's information.

1. On the 25th March the British Minister wrote to the effect that the suggestion that officers might be stationed in Yünnan to observe the conditions of trade was advanced in conformity with Article IX of the Treaty, which provides for travel in the interior, and did not at all imply the intention of appointing officers as Consuls there, and that [it might become necessary] to send British officials to inland centres, it may be to remonstrate with the local authorities, or in any case to report upon facts.

The Prince has to observe hereupon that the IXth Article of the Treaty has for many years been acted upon in conformity with its provisions. When passports were issued last year to the officers about to visit Yünnan, this was done, under Article IX, as to travellers. They were invested with no authority for the discharge of official functions, and they were consequently possessed of no powers of "remonstrance with local authorities." Inasmuch as the British Minister had undertaken nothing in excess of Treaty provisions, neither the Prince nor the Ministers of the Yamên suspected him of any intention\* to appoint Consuls to reside in Yünnan. The statements made and intentions entertained in this respect are distinctly understood on both sides, and will by both sides be adhered to.

Touching the passports issued on the present occasion, however, for officers who are to proceed to Yünnan, it is stated in these documents that the bearers are to be present at a trial. It was in consideration of the murder of Mr. Margary, whose fate is deeply to be deplored, that a mode of action was conceded beyond the proper rule. What has been done in this instance must not be appealed to as a precedent.

If his Excellency the Viceroy of India should send another party of officers to Yünnan, the number of officers sent and their names must be set forth in the stamped passports which have been issued for their use, and the number of officers with their names be communicated by the British Minister to the Yamên, in order that the particulars may be forwarded for the cognizance of the Government of Yünnan.

2. With reference to the Memorandum received from the British Minister on the 20th March, on the subject of diplomatic rights and privileges as accorded by international usage, and his despatch of the 27th referring to the same subject in connection with Article IV of the Treaty, the Prince has to state that Articles of Agreement were drawn up in the year 1873 between the Prince and his colleagues and the Ministers of the five Powers. When His Majesty the Emperor shall hereafter assume in person the reins of Government, action can be taken, as a matter of course, in conformity with this Agreement. Nothing further can be conceded.†

3. With reference to the British Minister's despatch of the 27th instant, on the subject of Article XXVIII and others of the Treaty, the Prince has to observe that as regards the payment of customs\* and inland duties by foreign imports and Chinese exports, the XXVIIIth Article of the Treaty and the five Supplementary General Regulations afford a rule by mutual attestation, which it is obviously right should invariably be followed. Within the last few years, the Yamên of Foreign Affairs has drawn up three rules relating to drawbacks, exemption certificates, and transit passes, which were transmitted for the information of the British Minister. If it be wished to arrive at a well-considered and satisfactory system of action, the only way to do so is by proceeding on this basis. Nothing further can be conceded.‡

\* Reference is of course made here to the explanation given in the despatch of March 25, in which future possibilities are adverted to.—W. F. M.

† The word translated above as "conceded" may be rendered "negotiated," "discussed," or "agreed." The sentence might be rendered, "The matter admits of no further discussion."—W. F. M.

‡ See previous foot note.



It was observed, in a note received from the British Minister on the 24th August, 1871, that "trade with China is to the advantage of foreign merchants, but through the abuses which [have arisen] in great number, the Customs' revenue is caused to suffer." This remark adequately proves how thoroughly the British Minister appreciates the conditions appertaining to trade. If merchants in general would but truly abide by the provisions of the Treaty, there would be no need whatever for the discussion of any further arrangements. Moreover, it has to be said, the permission given by the Chinese Government for the re-importation of native produce (the coast trade), was granted to the mercantile class as a privilege in excess of their rights. Since, however, abuses have grown out of this in daily increasing number, and the Customs' revenue from duties and tonnage dues has in consequence suffered continual diminution, the Chinese Government contemplates entering on a full consideration of this subject with the British Minister.

4. With reference to the despatch of the 2nd instant, in which the British Minister refers to a [possible] disposition to bar the way to free inquiry in connection with the officers who are to be sent to Yünnan, the Prince has to observe that he has consented to allow the officers in question to be present to witness the proceedings when the case is finally brought to trial\* in Yünnan, without any intention of subjecting them under restrictions (barring the way to inquiry). Beyond the fact, however, of [allowing these officers to be] present to witness the trial, no promise has been made on the Prince's part. As regards the passage in the British Minister's despatch, to the effect that "no pains must be spared in the attempt to arrive at the truth," it is, of course, for the Government of Yünnan to adopt measures with a view to guard against culpable laxity being shown.

5. In successive despatches the British Minister has treated of an indemnity in connection with the affair of Mr. Margary. On this subject it must be stated that in the case of crimes punished by the Chinese Government, the laws must guide the penalty to be inflicted. No compensation (or indemnity) is liable to be paid over and above the infliction of punishment for the act of crime. [Nevertheless] the Prince, mindful of the sad fate of Mr. Margary [was ready] to make a concession based on the British Minister's proposals, and offered compensation for any actual losses which might be proved on inquiry to have been sustained on the part of Mr. Margary and those with him, whether killed or wounded, through the pillage of their effects; but to this the British Minister did not agree. In a subsequent despatch the Prince further offered to consider the propriety of acting in the manner which the British Minister had suggested respecting indemnity for Mr. Margary. This was unquestionably in excess of the legitimate bounds of liberal treatment, and beyond this no claim for indemnity could be entertained. The British Minister, in his reply, declined acceptance of the offer. In point of fact the circumstances of the case should be investigated before deciding whether any compensation ought to be agreed upon. This point remains to be further dwelt upon.

6. As regards the passports originally given in this case, on the British Minister having specified the number of officers to be sent, and other particulars, and having applied to the Yamên for its stamp upon the passports, the Yamên communicated the particulars, as they were given, to the Government of Yünnan, for its information. All that the Government of Yünnan, for its part, could do was to afford protection, with due care, to the officers, as specified; and under the circumstances as set forth in the passports which were given. If, in the case of Mr. Margary's expedition, or of any future expedition to be sent by his Excellency the Viceroy of India to Yünnan, the number of the officers and other particulars should not tally with what has been set forth in the passport, the discrepancy even reaching, possibly, very wide proportions, it would be out of the power of the Government of Yünnan, and of the local authorities also, to act on their side in conformity [with the wording of the passports]. This point remains to be further dwelt upon.

Dated Kwang Sü, 1st year, 3rd moon, 9th day (April 14, 1875).

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Inclosure 2 in No. 14.

*The Prince of Kung to Mr. Wade.*

(Translation.)

IN the matter of the murder of Mr. Margary on the frontier of Yünnan the Prince has agreed, as a concession beyond the limits of what is due, that the officers who are to be sent to Yünnan by the British Minister shall be present at the trial to be held; and, passports having been stamped, the Minister Superintendent of Trade for the Northern

\* "Ting-an," *lit.*, the settlement or disposal of a judicial case; the proceedings taken when sentence is pronounced, as distinct from the preliminary hearing.—W. F. M.

Ports has been desired to appoint an official to accompany the officers on their journey, as has already been stated. In this case, however, when writing to request that action be taken, the British Minister had no knowledge of the causes of the collision which took place, whilst the Yamên, on its side, was equally without information from the Provincial Government of Yünnan. On the strength of the British Minister's communications the Prince memorialized the Throne, requesting that commands be sent to the Governor-General and Governor of Yünnan to take action in the matter. This step was actuated by a sense of the gravity of a case in which life had been taken, and by regard for the duties which relations of friendship impose. The British Minister, on the other hand, although unacquainted with the particulars of the occurrence, claimed an indemnity of 150,000 taels, which he alleged his willingness to accept as sufficient to cover all pecuniary demands on the Chinese Government, if the Chinese Government agreed to place that amount in his hands. He further declared that all the propositions he had advanced were within the limits of the Treaty.

The Prince is at a loss to understand on what Treaty provision the British Minister has based his estimate of the indemnity he demanded, and it is impossible for him to avoid a feeling of perturbation, under the circumstances.

The foremost requisites in the conduct of affairs between the two countries are a dispassionate mind and a well-intentioned disposition. It stands to reason, undoubtedly, that in matters of serious importance explanations cannot fail to be sought with all promptitude. At the same time, in divers cases in which subjects of China have suffered death or injury at the hands of British officers or private individuals, and which have been the subject of negotiation between the Prince and the British Minister or his predecessors, the difference between the tone that has been taken in the replies received, or in the action announced, whether in cases that have been terminated or in such as still remain pending, and the action which the Yamên of Foreign Affairs has wished to see taken, is attested by the records existing in relation to these several cases. The Prince, nevertheless, has at no time put the British Minister or his predecessors in an awkward position by bringing urgent pressure to bear upon them. [He would ask whether,] in all the years that have passed, in cases relating to Chinese subjects, officials or private individuals, who have suffered pecuniary wrong or bodily injury, or in cases of such gravity as homicide itself, there have ever been exhibited, in personal discussions, an inadmissible tone and demeanour? and whether, for assent or refusal to propositions that have been advanced, a day and an hour have ever been fixed within which a definite determination has been insisted upon?

Impressed with the conviction that, in the treatment of affairs to which the two countries are pledged, the conduct to be mutually exhibited should be dispassionate and well-intentioned, the Prince and his colleagues, in cases of serious importance, in which the British Minister or his predecessors have not succeeded in arranging an immediate settlement, or in which the action taken has not been looked upon as satisfactory, have, nevertheless, felt that they could afford to be patient, trusting to find opportunities of dispassionate negotiation, with the object of attaining a fair solution of the questions at issue, to the end that the relations between the two countries might be maintained in their integrity.

[As regards relations], no such thing as private intercourse has primarily subsisted between the Prince and the British Minister. Relations were inaugurated when Treaties were concluded for mutual intercourse between the two countries, [entailing] the conduct of affairs on an amicable footing. What is meant by the word "relations" are the relations between the Governments of the two countries, not relations between the two individuals, ourselves.

In the case at present under discussion, no sooner was the British Minister's communication received than action was taken in the manner indicated above, in which, it may be truly said, the Chinese Government went to the extreme limit required by the nature of the case, and fulfilled to the utmost the duties of courtesy, for the sake of maintaining unimpaired the relations of friendship subsisting between the two countries. In the British Minister's correspondence, nevertheless, there occurs, firstly, the passage that "should this demand not be complied with, I shall consider my relations with your Imperial Highness at an end;" and, again, "I shall break off relations and withdraw the Legation from Peking;" and yet, again, "I cannot consent to further discussion regarding these demands, and if the documents be not sent to me by the hour I have named, I shall assume that the Chinese Government is trifling with me, and I shall declare most positively that my relations with the Tsung-li Yamên will be broken off accordingly."

Thus relations which are held in such high respect as the Prince [has here acknowledged], are, by the British Minister [as in the foregoing sentences], so lightly declared to



be broken off. It is perfectly understood that, on the passports having been given, the British Minister had declared that relations would not be broken off; but in the apprehension lest the British Government be not aware that the Prince's mind is bent upon the maintenance of relations, he begs, as the British Minister will doubtless be communicating with his Government during his present visit to Shanghai, that the observations set forth above may be transmitted by him to the British Government, and that the British Foreign Office should address a reply to the Prince direct, to the end that business may be transacted hereafter in a dispassionate spirit, thus more effectually giving weight to friendly relations, as is the Prince's earnest hope.

The present communication is accordingly addressed for the information of the British Minister.

Kwang Sü, 1st year, 3rd moon, 9th day (April 14, 1875).

Inclosure 3 in No. 14.

*Mr. Wade to the Prince of Kung.*

(Extract.)

*Shanghai, April 28, 1875.*

I HAVE had the honour to receive two communications from your Imperial Highness, both under date the 14th instant. The first is intended to supplement the answers earlier returned to my despatches written between the 22nd of March and the 2nd instant, on the subject of the Yünnan outrage; the second is a protest against the peremptoriness with which I insisted on certain demands.

I shall allow myself, before I go farther, to observe that the distinction between propositions advanced or pressed by me and demands insisted upon, has been more or less lost sight of, and that what has fallen from me on one or two points has, notwithstanding my explanations, been forgotten or misunderstood.

The discussion is properly divisible into three periods. The first extends from the 12th of March, the day on which I first addressed your Imperial Highness, to the 22nd, when I received the Tsung-li Yamên's memorandum on the six propositions submitted in mine of the 19th, together with your Imperial Highness' despatch, also dated the 22nd, inclosing copy of the Emperor's Decree of the 21st, by which the Governor-General of Yünnan and Kuei-chou was directed to repair at once to his post. The second commences on the 24th of March, when your Imperial Highness did me the honour to receive me at the Yamên, and I laid before your Imperial Highness a second memorandum, from which, as I pointed out, I had excluded all reference to the appointment of a special Commissioner I had asked for on the 19th, or to the declaration I had hoped to obtain from your Imperial Highness regarding a stricter observance of Articles IV and XXVIII of the Treaty of Tien-tsin. The propositions retained in this second memorandum were three: that a specified sum of money should be placed in my hands to be applied as Her Majesty's Government might decide; that passports should be given me for a second mission into Yünnan, should the Government of India see fit to send one; that separate passports should be given me for such officers as I might instruct to proceed to Yünnan, for the purpose of assisting at the trial of any prisoners charged with the directing or taking part in the outrage complained of.

In my interview with your Imperial Highness, though urging very strongly the payment of the sum I had named, I at the same time impressed on your Imperial Highness that the condition on the satisfaction of which I insisted as essential, was still the presence of the officers I should send to assist at the trial; without this, as I observed, millions of indemnity would be of no value whatever. Your Imperial Highness' despatch, discovering, as I conceived, a disposition to evade concession of this demand, the discussion entered upon its third stage upon the 26th of March, when I stated, in so many words, that if it were not complied with by a given day, I should leave Peking, and suspend my relations with your Imperial Highness.

Now, to come to the two despatches under acknowledgment. In the first of these, your Imperial Highness reviews and combats certain observations of mine regarding the detachment of British officers into the interior, should the protection of British interests render their presence desirable. My observations proceeded from a belief, which the tone of the Ministers of the Yamên with whom I had been in conference suggested, that the demand for passports for a fresh mission from India would be resisted, I therefore desired Mr. Fraser to remind the Ministers who received him at the Yamên on the 20th March, that if officers sent by the Viceroy to travel in Yünnan were directed to remain there for a number of years, there was nothing in the Treaty to prevent them.

I acquainted your Imperial Highness a few days ago that a difference still unsettled with the Government of Burma renders it, for the present, undesirable that British officers should traverse Burmese territory. There is consequently no immediate prospect of a mission being sent from India across the frontier. Should the Viceroy of India at any future time decide on sending one, he will communicate all necessary particulars to the Legation at Peking, and the Legation will be sure to transmit to your Imperial Highness whatever information it may receive from his Excellency. As regards the officers who, in this particular instance, are about to be sent to Yünnan, or whom the acts of Chinese officials may, on future occasion, render it necessary to send elsewhere, there is more to be said in due time; but I shall first briefly notice the two subjects next adverted to in your Imperial Highness' despatch—the position, namely, of foreign Ministers at Peking, stipulated for in Article IV, and the taxation of trade inland as regulated by Article XXVIII of the Treaty of Tien-tsin. To both I warned the Yamên some days before his present Majesty was proclaimed, it would be my duty ere long to direct attention. I had no desire, I said, unnecessarily to embarrass your Imperial Highness, or to put forward what I might have to say in a form that would be distasteful, but now at the commencement of a Regency that promised to be of much the same length as the last, I felt bound to observe that, neither in respect of the one question or the other, was it to be expected that foreign Governments would show themselves as long-suffering as they had proved during the minority of the late Emperor.

To take the last of the two questions first. So far as the irregularity and arbitrariness of inland taxation, whether in the form of "likin," or otherwise, are concerned, I shall content myself for the moment with remarking that if, as your Imperial Highness' despatch leaves it to be inferred, the Tsung-li Yamên is determined to maintain that the Article is in general observed; or if, when obliged to admit its violation, as in the case of the detention of imports in Kwei-chow-fu, the Yamên is unable to compel the local authorities to do justice to the foreign merchant aggrieved, the remedy lies easily within the reach of the foreign Powers, and the Chinese Government must be prepared sooner or later for some such measure of retaliation as will suffice, while it indemnifies the sufferer for his loss, to secure him against recurrence of his wrong. I shall not attempt here a more detailed exposition of the nature of the wrong of which I complain. I could state nothing that is not as well known to the Tsung-li Yamên as to myself. It would require no great effort on the part of the Chinese Government to redress it, and the promise of reparation I desired to obtain from your Imperial Highness would have been acceptable not only as removing a serious cause of complaint, but as an earnest of the good faith and friendly dispositions of the Chinese Government.

It was this consideration, as I have earlier explained, that appeared to me to justify connection of such a question with the conduct of a case so completely foreign to it as the Momein atrocity.

For the introduction at such a moment of another question, in appearance equally little in direct relation with this atrocity—I mean the position of the Foreign Minister,—I have pleaded the same justification. I do not hesitate, at the same time, to declare that, however exclusively commercial in character the interests I am called on to watch in this country, I consider an improved appreciation of what is due to Foreign Ministers by the Chinese Government the foremost in importance of all propositions that it is the duty of the Tsung-li Yamên to entertain; and for this plain reason, that until the cause which interferes with a due recognition of its obligations to foreign representatives by the Chinese Government be removed, its relations with the Governments represented will continue to be what they have been up to this time, relations liable to be broken at any moment by the acts or omissions of Provincial Governors, or their subordinates, who, if not in so many words instructed by the Central Government to manifest a feeling of hostility to the foreigner, are but faithful to the principle by which the policy of the Central Government is guided, the principle of withstanding, either secretly or openly, every movement by which China may be possibly committed to a departure from the traditions of non-intercourse. To this policy I ascribe most of the violations of Treaty, small and great, remonstrance against which forms the endless occupation of a Foreign Minister at Peking, but in particular those graver outrages which, in the last few years, have excited the horror and indignation of foreign communities. I am speaking here more particularly of those acts with the commission or non-prevention of which the authorities, rather than the people of China, are chargeable; the murder, for instance, of the Abbé Niel in Kwei-chow by order of the Provincial Commander-in-chief; the forcible detention and ill-treatment of Mr. Cooper when travelling under passport in Wei-si, by the Sub-Prefect of that jurisdiction; the Tien-tsin massacre; and now this attack, by order of the authorities of Momeim, upon a party provided with



passports from the Central Government. I say that, if the relations of China with other Governments had been such as are maintained between all other Governments in Treaty relations with China, if the Central Government had been at any pains to make it manifest to the Empire that it was not ashamed of intercourse with foreign powers, and desired rather to cultivate than repel them, the Ti-tu of Kwei-Chow would not have taken on himself to direct the murder of the Abbé Niel, the Sub-Prefect of Wei-si Ting would not have laid hands on Mr. Cooper; the Prefect and Magistrate of Tientsin, instead of encouraging a belief that children were being kidnapped by the Sisters of Charity, would have taken steps to disabuse the people of a notion so false and ridiculous. Lastly, the Momein authorities would not have moved troops to overwhelm a small party of gentlemen, of whose entrance into Chinese territory the Chinese Government had been duly advised.

Your Imperial Highness objects that in the last case I have as yet no evidence but the Viceroy of India's telegram. I admit it. But, as I have before observed to your Imperial Highness, the Government of India has officers in Burma of high standing; their means of information are excellent; and when an officer of the rank of the Chief Commissioner in Burma telegraphs such or such an account of what has happened to the Viceroy of India, I am satisfied that his statement is substantially true. I am satisfied that, in the present instance, an act of treachery and violence has been done. What reparation Her Majesty's Government may feel compelled to exact remains to be seen, but I repeat that, were the intercourse of China and Her Majesty's Government on the same footing as the intercourse of Her Majesty's Government and any other Government in Treaty relations with it, such crimes as those I have enumerated would not be committed, and that instances of official misconduct—it is impossible that instances should not sometimes occur—would more readily admit of adjustment. The attitude of a foreign Power, when a difference with China arises, would not necessarily be, as at present, the attitude of a Power which feels that without intimidation or resort to force it has but a faint chance of obtaining justice.

For myself, I can honestly affirm that during the fifteen years that, as Chief or Subordinate of Her Majesty's Legation, I have resided in Peking, the pertinacity with which I have again and again denounced the unwillingness of the Chinese Government to give that evidence, which a change in its bearing towards foreign Ministers would give, of an abandonment of its determination to stand aloof from the rest of the world, has not been due to any desire for the personal glorification either of myself or of my predecessors; that it has not been more due even to a desire to see the development of the legitimate interests of my own and other Governments than I feel must follow upon a renunciation of its traditional exclusivism by the Government of China, than to a conviction of the danger to which its persistence in its refusal to draw near to the rest of the world must expose it. It is to this end that in past years I have never ceased to urge upon the Yamén the necessity of according to foreign Ministers a position akin to what they enjoy at other Courts; a position that would significantly declare to the officials and people of this country that the Sovereigns, whom those Ministers represent, are their friends, and that their Representatives are consequently the privileged guests, of the Emperor of China. It is only when these conditions are satisfied as the Treaty requires, that China can be effectively represented abroad, and until she is so represented, she is at the mercy of a hundred dangers from which the pettiest States in the family of nations are comparatively secure.

Your Imperial Highness cannot now fail to understand why, with such a cause to deal with as the Yunnan outrage, I gave to matters so seemingly alien so prominent a place in the commencement of the discussion. Such a declaration as I asked for on the part of your Imperial Highness regarding them, with the payment of the sum specified, only to be applied under the conditions I mentioned, would have gone far to close a question of which, believing as I do in the intelligence telegraphed to me from India, I cannot but regard the solution as difficult in the extreme.

I say would have gone far to close it.

Punishment will, of course, have to be inflicted on the guilty. I have said that Her Majesty's Government would be certain not to demand punishment in excess of what the law of China prescribes for their offence; and your Imperial Highness, in the second of your despatches under acknowledgment, asks how, having made this statement, I can consistently claim an indemnity. This question has already been answered in my despatch of the 27th of March, in which I showed that the indemnity was asked for as something entirely distinct from the punishment of the persons guilty, directly or indirectly, of participation in the attack on the Indian Mission or the murder of Mr. Margary.

I expressly stated that it was a thing apart in my first conference with the Grand Secretary Shên on the 19th March. I explained again and again why I had brought forward the question of indemnity at all, and under what conditions it was to be placed in my hands. The demand which I could not compromise was for passports, and when, after conferences and correspondence lasting from the 12th to the 26th March, your Imperial Highness still appeared to me to avoid the promise I required, that the officers sent by me should assist at the trial of the accused, it will be found that the indemnity is no more pressed for in my correspondence.

Your Imperial Highness takes credit for the promptness with which the Yamên acted in this affair. It will not, I am certain, appear to Her Majesty's Government that the action taken was remarkably prompt when an outrage so terrible and so insulting to a foreign Government having been brought to your Imperial Highness' notice, nine days were allowed to elapse before the Tsung-li Yamên applied for the Decree which was needed to direct the attention of the chief provincial authority to investigation of the particulars of the crime. Your Imperial Highness takes credit, farther, as for an extraordinary concession, for the permission granted to any officer to be present at the trial of the perpetrators of the crime. Now, I hardly know an instance of a complaint involving judicial proceedings against a British subject by a Chinese being reported to the Tsung-li Yamên, in which the Yamên has not put forward a claim for the Chinese authority not only to be present at the proceedings, but to take part in them as judge. I have again and again had to dispute this pretension, notably in my communication of the 31st August last, relating to the Fawcett case. On the other hand, I have never denied the right of the Chinese authorities to be present in the Court so that they may watch the proceedings; on the reverse, I have strongly advocated their presence. If the right be not admitted or implied in Article XVII of the Treaty, the justice of the claim is too patent to allow of its being disputed. And this is all I have claimed for the officers now about to proceed to Yünnan. Your Imperial Highness informs me that their assistance at the trial they go to witness is not to be regarded as a precedent. I am compelled to rejoin that, while I continue Minister, no British subject provided with a passport will sustain an injury at such a distance from a port as to render it impossible for the case to be dealt with otherwise than on the spot, without my asserting, if I conceive it necessary, the same right that I now assert, the right to be surely informed by my own agents of the nature of the evidence on which the Chinese accused may be condemned or acquitted. The Chinese Government will never be refused the exercise of this right in our Courts, proceedings in them are open to all comers, and the history of the cases above-cited, eminently the history of the Tien-tsin massacre, makes it in my opinion imperative that we should exact it of the Chinese Government.

There is but one more argument to which I feel called upon to refer. Your Imperial Highness contrasts the patience exhibited by the Chinese Government when wrong has been done by British officers or people, which the Legation has not been able promptly to redress, with my demand for the production of the passports required within a given time, under penalty of a rupture of relations. No complaint of wrong done by British subjects has ever, to my knowledge, been rejected by the authority competent to inquire into it. I do not say that the result of the inquiry has been invariably such as to insure the satisfaction of the complaint; it has been frequently the reverse. But your Imperial Highness would find, upon examination, that the decisions of our Courts, from which no one, be his nationality what it may, is ever excluded, are fully as often unsatisfactory to complainants of our own nationality. The suitor being a Chinese fares neither better nor worse than he would if he were a British subject. We shall be well content if the Chinese Courts are as careful to do justice by us as our own are by Chinese.

As to acts done by British officers, there are on record, no doubt, some complaints which it has been impossible to satisfy; but these are of no great number, and with very rare exceptions a powerful defence may be made for them. The acts referred to were done almost all at a time, when the country being overrun by rebels, and the seas infested by pirates, the duty of protecting the port communities against both evils was cast almost as a rule upon the navies of foreign Powers. It is not to be denied that very serious mistakes were more than once committed, during the period I speak of, by British officers, but it must be remembered, on the other hand, how largely, both at the ports and elsewhere, the Government and people of China benefited by their exertions.

Were it otherwise, I deny that any parallel can be justly drawn between any act brought home to a British officer, civil or military, and the outrage which has occasioned this correspondence. With the record of the past before me, I had no option but to insist on the production of the passports I demanded; passports for a new mission, that the Government and people of China might see that we are not to be deterred



by treachery or violence from an enterprise undertaken in the exercise of our legitimate rights; passports for officers to assist at the trial of the parties accused, in order that there might not be hereafter any question as to the identity of those parties, or as to the measure of justice dealt them.

Your Imperial Highness is perfectly correct in affirming that "relations," in the sense of private relations, have never existed between your Imperial Highness and myself. I have never presumed to think that I had private relations with your Imperial Highness. When I threatened to leave Peking, I acted as the Representative of a foreign Power is entitled to act if the Government to which he is accredited refuses to comply with his just demands. My departure from Peking would have involved a suspension of relations between my Government and the Government of China, which, unless my Government declined to approve my action, would not have been renewed until the Government of China had complied with my demands or with some other demand which it might seem good to my Government to substitute for the first.

I have little fear that my threat of the 26th March, when my correspondence with your Imperial Highness has been read, will be disapproved by Her Majesty's Government. The whole of that correspondence, with copies of every note, memorandum, and minute of Conferences to which the matter before us has given occasion, was forwarded to the Earl of Derby by the mail of the 16th instant. Translations of your Imperial Highness' two despatches of the 14th instant, with a copy of this reply, will be sent to his Lordship upon the 2nd May.

As regards the reply which, in the latter of your Imperial Highness's despatches last named, it is requested may be addressed directly to yourself, I shall take the liberty of observing, that were the Emperor of China represented at the Court of any Sovereign, it is through the Representative of His Imperial Majesty that the protest or remonstrances against my proceeding to which your Imperial Highness's despatch gives expression, would be transmitted to the Earl of Derby. His Lordship's reply would in that case be returned to your Imperial Highness through the same channel. The Emperor of China has not as yet exercised the right fully secured to His Majesty by Article VI of the Treaty of Tien-tsin, and whether in the absence of any Agent representing His Majesty, the Earl of Derby will elect to make answer in the manner proposed by your Imperial Highness, or, as heretofore, communicate the opinions of Her Majesty's Government through myself, it must be for his Lordship to decide. A few weeks will determine the question.

## No. 15.

*The Earl of Derby to Mr. Wade.*

Sir,

*Foreign Office, June 23, 1875.*

I HAVE received and laid before the Queen your despatches of the 1st of May, forwarding copies of two notes from Prince Kung dated the 14th of April and of your reply of the 28th of the same month, relative to the representations made by you to the Chinese Government on the subject of the attack on the Yunnan Mission and the murder of Mr. Margary.

I have thought it desirable at once to authorize you by telegraph to inform the Prince of Kung that you had received instructions from Her Majesty's Government to state to His Highness that the whole of the correspondence on the subject, including the notes above referred to, has been carefully considered by Her Majesty's Government and that they entirely approve your conduct and fully concur in the terms of your note of the 28th of April.

Her Majesty's Government will not be satisfied with anything less than a thorough investigation of the circumstances under which Mr. Margary met his death, and the punishment of the guilty parties, and you will tell the Prince that, as past experience has shown that no such investigation can be relied upon unless British officers are present at it, Her Majesty's Government must insist on your demands in this respect being complied with.

If the Chinese Government show their readiness to give every facility for carrying on the inquiry in a satisfactory manner, Her Majesty's Government will defer raising the question of indemnity until the result of the inquiry is known, but you will make it clear

that they reserve their right of bringing it forward at any moment if they have reason to be dissatisfied with the mode in which the investigation is conducted.

I am, &c.  
(Signed) DERBY.

### No. 16.

*Mr. Wade to the Earl of Derby.—(Received July 5.)*

(Extract.)

*"Vigilant," Hankow, May 10, 1875.*

MY telegram of 3rd instant will have informed your Lordship that as Colonel Horace Browne could not be at Shanghae for some time to come, I had proposed to visit the river ports with Admiral Ryder. He has been so good as to receive me on board his tender, the "Vigilant." Her Majesty's ship "Modeste" a saluting vessel, has been ordered to accompany the "Vigilant."

Mr. Grosvenor is on board with me, Mr. Crawford is on board the "Modeste."

We left Shanghae on the forenoon of the 4th instant, reached Chinkiang on the afternoon of the 5th instant, and Kewkiang on the afternoon of the 8th.

### No. 17.

*Mr. Wade to the Earl of Derby.—(Received July 19.)*

My Lord,

*Shanghae, May 28, 1875.*

I HAVE the honour to forward copies of two despatches to the Prince of Kung, which should have accompanied the papers inclosed in my despatch of the 14th of April.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

### Inclosure 1 in No. 17.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, April 1, 1875.*

I HAVE the honour to acknowledge your Imperial Highness' communication of this morning.

I write to say that the two officers I propose to send to Yünnan will be ready to leave Shanghae possibly on the 25th instant—certainly not later than the 1st of May. I am going to Shanghae earlier than I had proposed, for the express purpose of hurrying forward all necessary preparations.

I avail, &c.  
(Signed) THOMAS FRANCIS WADE.

### Inclosure 2 in No. 17.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, April 2, 1875.*

MR. MAYERS informed me on his return from the Yamèn last evening, that the Ministers who had received him had said something in deprecation of a possible desire on the part of the officers I am sending to Yünnan to proceed to places which the Chinese officer accompanying them might see reason to recommend that they should avoid.

The British officers I send will be instructed to act with the greatest discretion; but I must remind your Imperial Highness that the real object of their mission is the establishment of facts, in order to the satisfaction of justice in a case of remarkable atrocity.

The information communicated to me by the Government of India is to the effect that a party commissioned by that Government to travel in Yünnan under a passport



obtained by me from the Tsung-li Yamèn has been attacked in Chinese territory by troops which a Chinese authority had sent to destroy it, and that one of the party had been barbarously murdered.

As your Imperial Highness may suppose, the news has shocked and distressed Her Majesty's Government in no ordinary degree. No pains must be spared in the attempt to arrive at the truth, and it is my duty earnestly to request your Imperial Highness to cause such instructions to be issued to the Government of Yünnan as will to the utmost facilitate the access of the officers I send to whatever places they may find it expedient, in the discharge of their duty, to visit. So, also, as regards the persons whom they may require to interrogate.

I cannot too strongly impress upon your Imperial Highness that the smallest appearance of a disposition to bar the way to free inquiry will be very unfavourably interpreted by Her Majesty's Government.

I avail, &c.  
(Signed) THOMAS FRANCIS WADE.

No. 18.

*Mr. Wade to the Earl of Derby.—(Received July 19.)*

My Lord,

*Shanghae, May 29, 1875.*

JUST as I was starting for Hankow there arrived a letter from a French missionary stationed at Yünnan Fu, the capital of the Province of Yünnan, reporting the arrival at that city of a Chinese who had passed through it with Mr. Margary. The man, Wang Siu-shuang by name, subsequently reached Hankow, and as soon as he had been interrogated, was sent on to Shanghae by Mr. Alabaster, who put him in charge of Mr. Hurst, a Student Interpreter, who is going home on sick leave.

I inclose copies of the letter of Abbé Fenouil, the missionary referred to, and of the Memorandum of Wang Siu-shuang's statement, drawn up by Mr. Brennan, Acting Interpreter at Hankow. To this, Mr. Mayers, who re-examined the man as soon as he arrived yesterday, has added some notes.

On reperusal of the Memorandum, I have thought it advisable to put some further questions to the man myself. I was present from time to time when Mr. Mayers was speaking to him yesterday, and I am bound to say he seemed determined to say as little as possible about the more serious part of the affair, while, whenever unimportant matters were adverted to, he was sufficiently voluble.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure 1 in No. 18.

*Père Fenouil to Her Majesty's Consul at Hankow.*

M. le Consul,

*Yünnan-sèn, le 4 Avril, 1875.*

QUAND cette lettre arrivera à Cháng-hai, la mort tragique de Mr. Margary vous sera connu déjà depuis longtemps. Je ne vous donnerai donc pas ici de détails sur ce triste événement, d'ailleurs je ne les connais pas bien moi-même.

Mr. Margary avait cinq Chinois à sa suite; quatre ont été massacrés avec lui; un seul a pu s'échapper; ce dernier est arrivé ici hier au soir et se dispose à retourner dans son pays; c'est Wang Hsiu-shang, de Hang-yang Hsien.

A son passage ici, dans les premiers jours de Décembre, Mr. Margary et ses hommes déposèrent chez moi une partie de leurs bagages qu'ils devaient reprendre au retour; ce sont des livres Chinois, des habits, de la vaisselle, des conserves, et des boissons, avec une grande plaque en cuivre qu'on dit être un couvercle de baignoire.

Ma première pensée a été de confier ces divers objets à Wang Hsiu-shang, pour qu'il vous les remit; mais leur valeur intrinsèque serait loin de couvrir les frais de transport. Wang Hsiu-shang a repris ce qu'il a dit lui appartenir personnellement; le reste demeure à la disposition du Gouvernement Anglais. Je vous prie, M. le Consul, de vouloir bien me faire connaître ce que vous voulez qu'on en fasse.

Je n'ai pas l'avantage de parler Anglais, de l'écrire moins encore. Veuillez donc, s'il

vous plaît, me répondre en Français, et faire déposer votre lettre à la procure des Missions étrangères (Sân-te-tâng) à Cháng-hai.

J'ai l'honneur, &c.  
(Signé) T. FENOUIL, *Prov. Apost.*

(Translation.)

M. le Consul, Yünnan-sèn, April 4, 1875.

LONG before this letter reaches Shanghai, you will have heard of the tragical death of Mr. Margary. I shall not, therefore, give you the details of this sad event; indeed, I am not myself well acquainted with them.

Mr. Margary had five Chinese in his suite; four were murdered with him, and only one succeeded in making his escape. This latter arrived here yesterday evening, and is about to return to his own country; his name is Wang Hsiu-shang, of Hang-yang Hsien.

When they passed through here in the first days of December, Mr. Margary and his men left at my house a portion of their baggage which they were to pick up on their return; this consists of Chinese books, clothes, utensils, preserves, and liquors, as well as a large copper plate, which is said to be the lid of a bath.

My first idea was to entrust these articles to Wang Hsiu-shang, for him to deliver to you; but their intrinsic value would be far from covering the expense of their transport. Wang Hsiu-shang has taken what he said was his private property; the rest remains at the disposal of the English Government. I beg you, M. le Consul, to be good enough to let me know what you wish to have done with them.

I have not the advantage of speaking English, still less of writing it; would you therefore please answer in French, and send your letter to the care of the Foreign Missions (Sân-te-tâng) at Shanghai.

I have, &c.  
(Signed) T. FENOUIL, *Prov. Apost.*

#### Inclosure 2 in No. 18.

#### *<sup>a</sup>Deposition of Wang Hsiu-shuang.*

MY name is Wang Hsiu-shuang, I am a native of Hang-yang Hsien, father and mother both dead.

I accompanied my uncle Lin, who went with Mr. Margary, as purveyor. We left Hankow for Yünnan in August last, and all went well on the journey. From Yünnan Fu we reached Ta-li Fu, and then took the road to Hsiu-chieh (*i.e.* Bhamó), a place in Burmah. At Hsiu-chieh we met Colonel Browne, and remained at the Consulate some twenty days, where were also living a doctor, officers, Mr. Allen, and Mr. Elias. I accompanied Mr. Elias on his way back to China. Colonel Browne's party left three days before us, and then we too started from Hsiu-chieh. At this place five roads branch off. Colonel Browne took the road by which we had previously arrived; we travelled by the by-roads; the high road took a circuitous course; the by-roads brought us near to Yung ch'ang, where we had agreed to rendezvous. We could not proceed far for want of animals, and the savages prevented our passing. The Consul at Hsiu-chieh (the Assistant Resident, Captain Cooke) accompanied us for three days as far as a place called Meng-mo; he then turned back to Kutung to wait for news. Kutung is one stage from Meng-mo. Meng-mo is under a local chief; the people there are called Han-ssu-Panyi.

Once in the town, they closed the gates, so that the Consul at Hsiu-chieh (Captain Cooke) had to jump over the wall\* to get back to Kutung, where he waited for news from us in the afternoon.

Colonel Browne's party took another route. A foreign rifle was given to Li ssu Lao-mien by Mr. Elias on behalf of Colonel Browne. At first he refused it, but afterwards he told me to give it to him. I told Mr. Elias of this, and the gun was given to him.

We had not been able to hire animals owing to his having given orders to the savages. We requested him to procure horses to take us and our baggage back to Kutung. Li ssu-Lao Mien† has the rank of General; he is Chief of Nantien. He hired horses for us to get

\* Later statement:—"Li Ssü was manufacturing gunpowder in the town, and had had the gates closed to keep out the savages (Kakhyens). Only the east gate was left in a condition to be opened, and Captain Cooke got out that way."

† Lao Mien = Burmese. Li Ssü is said to be half Burmese, on the mother's side.



back to Kutung, forbidding us to continue the journey in this direction, because the road was dangerous and infested with robbers.

The evening of the second day after we had arrived at Kutung, Mr. Elias received a note from Colonel Browne, but he did not tell me what the contents were. Colonel Browne sent the letter from Hsiu-chieh, where he had returned. The bearer of the letter was a savage official. This man advised me to go, if I wished to save my life. They spoke Chinese: they said that the party had been murdered. I went off to look for my uncle's body. At Meng-mo I requested Li-ssu to give me a safe conduct,\* with which I went to Hsieh-fan. This is a savage town. From Hsieh-fan I went to Meng-ka, and on to Mang-shih, which is also a savage city. From Mangshih I went to Mingling, where there is a Taotai. It is a district city. Here they are all Chinese officials. Ming-ling is not far from the road we originally travelled by.

I had 4 taels odd with me, given to me by Mr. Elias. By night I made my way to Têng-yueh-chow, where enquiries were being made in the inns for Mr. Margary's servants who had escaped. When caught they were to be put to death. This was told me by a man from Hwang-pi-hsien,† a dealer in medicines.

As I was well known on the road previously followed by us, I stayed with a maker of bean-curd about 15 li outside the city. At night I went to Nantien to look for my uncle, thinking it was only a report that he was dead. Nantien is three days from the scene of the murder: the name of the place being Manying.

At Nan-tien I met a man from Têng-yueh-chow, who had previously accompanied Mr. Margary, and from whom had been hired twenty-five horses. Twenty-five taels were still due to him. He advised me to go back. I asked him if he had got his money; he said, "How could I, seeing they have all been killed?" He added, "Wasn't your uncle the man with the beard? He, Mr. Margary, and Chow, the cook, jumped over the wall at Man-ying, which were not very high, to get a cold bath. The Pan-yi people opened the gates and pursued them, and murdered them under a tree bearing a yellow fruit, not more than a hundred yards from the walls. Their ears were cut off and the bodies thrown in the water. The clerk, Yü, and the servant, Lav-chiang, were inside the town, where, from the Tóu-tsung hill, the servant fired off Mr. Margary's five-barrelled revolver. He fired five shots without hitting anybody, and then they were both murdered before they could escape." The horse-dealer saw this. The clerk and servant escaped into a temple, where they were killed. The horse-dealer told me all this: I didn't see it myself.

I returned to Têng-yueh-chow, being prevented from going to that yellow fruit tree by the presence of soldiers led by a Chinese official, whose name I don't know, despatched by the Governor of the Province to protect Man-ying. The inhabitants had all run away; no one was going into Man-ying, but all were escaping to Têng-yueh-chow. The local chief wrote to the Prefect of Têng-yueh, by name Wu, who reported the affair to Yung-chang Fu, and then it was known all over Yünnan Fu and Tali Fu. Troops were sent off immediately; people said that the English had risen and were guarding the pass to Man-ying.

On hearing this I came on to Hankow, working as sailor on board a Ssu-chuen boat bound for I-chang, and from I-chang came on to Hankow.‡

I was travelling at night when I met the horsedealer. It was about thirty li from the scene of the murder. I met him on the road. The people said that the English had risen, and that soldiers had been sent to protect the pass; the Man-ying people and others of the road said that two persons had escaped, and that they must be found and killed.

From Man-ying I went straight to Yung-ch'ang; at every inn there were officials keeping up a search, as also at every customs and tax station.

Persons without employment could not go by. With my safe-conduct from Li-ssu, I was allowed to pass unmolested.

At Yünnan Fu I gave the safe-conduct to one Yang, who handed it to the Governor.§ Yang and Chow had been previously sent by the Governor to escort Mr. Margary, and they had accompanied him as far as Têng-yueh-chow.

\* Later statement:—"I did not request a safe-conduct, but made use of the card which Li gave me in return for the gun which I took to him by order of Mr. Elias. The card had on it his name, Li Chên-kwoh. It served me as a pass on the only occasion when I was stopped by Kakhyens, 20 li beyond Meng-mo. They took my money (10 taels) away from me, but on being told by some persons who understood Chinese that the card I exhibited was Li's, they did not molest me further. The card eventually became crumpled up and destroyed."

† Hwang-pi-hsien, some 30 miles north-west of Hankow.

‡ Later statement:—"I was less than a month in getting from Yünnan Fu to Hankow. I embarked above Ch'ung k'ing in Ssu-chuen."

§ Later statement:—"If the above was written down at Hankow it must have been misunderstood, as I had no safe-conduct at all, and gave nothing to Yang."

When I saw Yang at Yünnan Fu, he had got back more than a month. He already knew that there was something wrong through the reports he had heard.\*

Têng-yueh is four stages from Man-ying; Man-ying to Kutung is seven stages.

I went myself to see Yang; he did not give me any money. He said to me, "You have got back then, and Mr. Margary has really been killed? The people there are very treacherous: there are no officials to control them; why did Mr. Margary go amongst them?"

The Pan-yi said that the exploring party had risen up in arms, and that they were Mahommedans.

I accompanied the funeral cortége of a deceased Yünnan magistrate from Yung-chang Fu to Yünnan Fu.

The horsedealer and the people in the inns said that in the baggage carried by Mr. Margary's party were concealed fire-arms; they also said the two large horses were stuffed with fire-arms.

### No. 19.

*The Earl of Derby to Mr. Wade.*

Sir,

*Foreign Office, July 21, 1875.*

I HAVE to convey to you the approval of Her Majesty's Government of the notes addressed by you to the Prince of Kung, copies of which are inclosed in your despatch of the 28th of May, on the subject of the Mission which it is proposed to send to Yünnan for the purpose of investigating the circumstances of Mr. Margary's murder.

I am, &c.

(Signed) DERBY.

### No. 20.

*Lord Tenterden to Sir L. Mallet.*

Sir,

*Foreign Office, July 22, 1875.*

I AM directed by the Earl of Derby to transmit to you, to be laid before the Marquis of Salisbury, a copy of a despatch from Her Majesty's Minister in China, upon the subject of the recent outrage on the Mission to Yünnan.†

I am, &c.

(Signed) TENTERDEN.

### No. 21.

*Mr. Wade to the Earl of Derby.—(Received August 12.)*

My Lord,

*Foochow, June 10, 1875.*

TO my very great satisfaction, Colonel Horace Browne arrived here yesterday evening. Admiral Ryder has had the goodness to offer him a passage in the "Vigilant," and he will proceed with us to Shanghai on the 12th instant.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

### No. 22.

*The Secretary to the Admiralty to Lord Tenterden.—(Received August 14.)*

My Lord,

*Admiralty, August 14, 1875.*

I AM commanded by my Lords Commissioners of the Admiralty to transmit, for the information of the Secretary of State for Foreign Affairs, extracts from a general letter of

\* Later statement:—"I saw Yang at his own residence. After I had been with him a short time he told me he had visitors to attend to, and he went into the house, after which I saw him no more. I called on a French missionary who had some property of Mr. Margary's in keeping. He advised me to leave the city as quickly as possible, as my life was not safe. I stayed only two days at Yünnan Fu; I reached the city about the 10th of April."

† No. 17.



the 11th June, from Vice-Admiral Ryder, Naval Commander-in-chief on the China Station, in regard to the conveyance of Colonel Browne on board Her Majesty's ship "Vigilant" from Shanghai to Foochow, where he wished to confer with Mr. Wade on the subject of the outrage on Mr. Margary; and the intention of both those gentlemen to return to Shanghai in that vessel.

I am, &c.  
(Signed) VERNON LUSHINGTON.

Inclosure in No. 22.

*Vice-Admiral Ryder to the Secretary to the Admiralty.*

(Extract.)

June 11, 1875.

I INFORMED you in my general letter of the 29th ultimo that Mr. Wade had requested me not to leave Shanghai finally until the arrival of Colonel Browne, who was on his way to meet him with reference to the outrage on Mr. Margary at Yünnan in February last, and had also expressed a wish to visit Foochow.

I accordingly embarked him and two secretaries in the "Vigilant," and left Shanghai on the 31st ultimo.

Colonel Browne arrived here (Foochow) on the 9th instant, and met Mr. Wade, and I am going to return to Shanghai to-morrow, conveying Colonel Browne as well as Mr. Wade and his suite.

No. 23.

*Mr. Wade to the Earl of Derby.—(Received August 17.)*

My Lord,

Shanghai, June 23, 1875.

I HAVE the honour to forward copy of a brief despatch I have addressed to the Prince of Kung requesting to be informed of any report that the central Government may have received from Yünnan.

The more particular occasion of my writing at this moment is explained in the following despatch of this date, in which I inclose translation of a note from the Yamên to Mr. Fraser.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure in No. 23.

*Mr. Wade to the Prince of Kung.*

Sir,

Shanghai, June 21, 1875.

I HAVE the honour to refer Your Imperial Highness to your reply to my communication of the 12th March, to the effect that on receipt of the intelligence therein brought to Your Imperial Highness' notice, the Government of Yünnan had been directed to make inquiry.

For the information of Her Majesty's Government I shall be obliged to Your Imperial Highness to let me know what answer has been received to the instructions forwarded to the Government of Yünnan. News of the attack upon Colonel Browne's mission appears to have reached Tien-tsin overland from Yünnan before the end of April.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

No. 24.

*Mr. Wade to the Earl of Derby.—(Received August 17.)*

My Lord,

Shanghai, June 23, 1875.

I HAVE the honour to inclose translation of a note addressed by the Ministers of the Tsung-li Yamên to Mr. Fraser on the 2nd instant, in reply to his inquiries as to the truth

of a report that two high officers had been directed to investigate the Yünnan outrage on the spot.

Mr. Fraser had sent Mr. Hillier to the Yamèn a day or two before, and he had brought back the inclosed report.

In my despatch of this date your Lordship will find the brief despatch I had forwarded to the Prince of Kung, requesting information on this subject.

If, as I continue to believe, a force was moved against Colonel Browne's Mission from Momein, the Brigadier General Yang-yü-kó was more than probably the official of the division to which the troops moved belonged.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

Inclosure 1 in No. 24.

*The Ministers of the Yamèn to Mr. Fraser.*

(Translation.)

June 2, 1875.

THE Ministers received a despatch on the 27th of May from the Governor of Yünnan, in which he states that, having received a despatch from the Tsung-li Yamèn with reference to the murder of Mr. Margary, he has memorialised the Throne, reporting the despatch of the Brigadier General, Yang-yü-kó and the Taotai Chên-si-Chên to the spot to ascertain by a searching inquiry what was the scene of the mishap. If it was within the territory of Yünnan, proceedings shall thereupon be taken in conformity with the laws. He will not fail to do his best to elicit the actual facts.

The case in question not having been elucidated as yet by a thorough investigation, the Ministers have not as yet felt themselves in a position to address an official communication to Her Majesty's Minister, but as Mr. Hillier has now called upon them to ask for particulars, they beg to forward the present note for Mr. Fraser's information.

Compliments, &c.

Inclosure 2 in No. 24.

*Memorandum of Mr. Hillier's Visit to the Yamèn.*

I WENT to the Yamèn on the 29th of May, under instructions from Mr. Fraser to inquire whether a report that had reached him to the effect that the Yamèn had despatched two special Commissioners to inquire into the Yünnan outrage was true or not. I met the Ministers Shên and Chung-kow, who, in answer to my inquiries that acting Brigadier General Yang-yü-kó and Chên-si-Chên Taotai, both officials of the Yünnan Province, had been directed some time since to make the necessary inquiries, but that no other officers had since been appointed.

They had received, they said, no further news from Yünnan, and were anxious to know if Mr. Wade had heard any particulars. They had been informed that he had returned to Shanghai, where they said Colonel Browne had also arrived. Although they made no direct assertion to that effect, they seemed to imply that they had been expecting some communication from Mr. Wade, and complained that all the news they got was from the Shanghai Chinese newspapers, which were very unreliable.

In answer to a further question as to the official status of Li-ssu-ta-yeh, which I was directed to put to them, they replied that, after careful inquiry, they had been unable to find any such name among the lists of local officials and T'u-ssu, and they were, therefore, almost positive that, if any such person did exist, he must be an officer of very low rank.

(Signed) WALTER C. HILLIER.

P.S.—Brigadier General Lin Chih, who lately arrived from Yünnan, left his post before the outrage occurred, and has stated to my informant that it was only after his arrival in Peking that he heard indirectly of the affair.

W. C. H.



## No. 25.

*The Earl of Derby to Mr. Wade.*

(Telegraphic.)

*Foreign Office, August 21, 1875, 5.30 P.M.*

REPORT by telegraph what the precise arrangements are which it is proposed to make in regard to sending special mission to Yünnan, and when it is intended to set out.

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## No. 26.

*The Earl of Derby to Mr. Wade.*

Sir,

*Foreign Office, August 21, 1875.*

I HAVE received your despatch of the 23rd of June, and I have to convey to you my approval of the note, copy of which you inclose, which you addressed to the Prince of Kung, requesting to be informed of any report that the Central Government may have received from Yünnan.

I have, &c.  
(Signed) DERBY

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## No. 27.

*Mr. Wade to the Earl of Derby.—(Received September 13.)*

(Extract.)

*Shanghai, July 24, 1875.*

I INCLOSE copies of Mr. Grosvenor's report of his interview with his Excellency Li Han Ch'ang and of a note which I addressed, on receipt of this report, to the Prince of Kung, complaining of the dilatoriness and incompleteness of the Chinese Government's proceedings, and requesting to be informed whether the passports issued to me when I was leaving Peking were in order or not.

I also inclose copy of a memorandum which, with little, if any, modifications, will, at the right moment, be presented to the Prince of Kung as recording our case against the Chinese Government.

I shall join Mr. Mayers at Tien-tsin some eight or ten days from this date.

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## Inclosure 1 in No. 27.

*Mr. Grosvenor to Mr. Wade.*

(Extract.)

*Hankow, July 9, 1875.*

IN pursuance of your instructions dated the 3rd instant, I reached this port on the 7th instant, and sent in your note to the Governor-General Li on the 8th, intimating at the same time that I should wait upon his Excellency at 11 A.M. on this day.

In the afternoon of yesterday I was informed by Mr. Alabaster that his Excellency would see me at the time appointed.

The country is covered with flood, and the difficulty of crossing the river great; so Mr. Alabaster requested Captain Bolitho, of Her Majesty's ship "Swinger," to give myself and Mr. Baber a passage across to Wu-ch'ang.

I left the Settlement a little after 10 in Her Majesty's ship "Swinger" this morning, and reached the Governor-General's Yamên about 12 o'clock.

I was politely received by the Governor-General, and, in accordance with your instructions, commenced the conversation by alluding to the reason of my visit, to which his Excellency replied that he was deputed by the Emperor to proceed to Yünnan to investigate the circumstances attendant on the murder of Mr. Margary, and to punish the offenders. His Excellency said, "This matter must be settled." His manner and words indicated a strong desire to see a satisfactory settlement.

I then explained to his Excellency the nature of the instructions you had received from Her Majesty's Government, adding that though there was a considerable feeling of distrust amongst foreigners on account of the many wrong doings of the Chinese Government during the last ten years, it was in his Excellency's power, by a thorough investiga-

tion of this case, and by bringing the criminals to trial and punishment, in some measure to restore a confidence in the Chinese Government which is at present waning.

His Excellency was not particularly anxious about my movements, so I thought it unnecessary to enter into any explanations regarding them. I merely observed that I should probably start in a month or six weeks.

The Governor-General did not appear anxious to find out what we know about the Margary murder. He did not even know the reason why Mr. Margary had been sent to Yunnan.

His Excellency's communications amounted in sum to this; that he had received the Emperor's orders to go to Yunnan to find out the details of the Margary murder, and that he was prepared to do the best he could to discharge the office thus imposed upon him.

I proceeded from this point to inform his Excellency that the attack on Colonel Browne's expedition was, internationally speaking, the most important dereliction from duty on the part of the Chinese officials, and was met by the rejoinder that his Excellency was totally unacquainted with any affair of the kind; moreover, that it was a matter that did not concern him, as his instructions from the Tsung-li Yamên were to investigate the Yunnan affair, and that he had no cognizance of any other.

With regard to the question of an escort to ensure safety until the Burmese frontier was reached, his Excellency stated that he was not a Yunnan official; that he could promise nothing; that the Governor-General of Yunnan must be consulted on the spot before any determination could be arrived at.

I mentioned that the Tsung-li Yamên had granted passports for a fresh Indian mission, and I produced them. His Excellency, to whom such documents appeared to be a novelty, examined them with care, and seemed to me to consider that they were of no particular importance, because issued by yourself, and only bearing an indistinct seal, his idea evidently being that such a document should emanate from the Tsung-li Yamên and not be the production of a foreign Minister, and this notwithstanding my reiterated asseveration that the document was, internationally speaking, in due form and entitled its bearer to the protection of all officials to whom he showed it.

I questioned his Excellency several times as to what information he had received or knew others to have received regarding the Margary murder (it was useless, of course, to do so as regards the attack on Colonel Browne's party), but he showed the most complete ignorance of the whole transaction.

Mr. Baber very properly expressed to his Excellency his astonishment that, in a case of such importance, he should be without information, and compared unfavourably the state of things in China with that in other countries, from which position the Governor-General tried to escape on the ground of the vast extent of China, but was unable to explain how couriers, who are supposed to cover nearly 200 miles a day, had failed to bring news from Yunnan in three months' time.

His Excellency expressed more than once his desire to see the Margary affair satisfactorily settled, but disclaimed any knowledge of the attack on Colonel Browne, and, in addition, stated that his instructions from the Tsung-li Yamên made no mention of this latter part.

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Inclosure 2 in No. 27.

*Mr. Wade to the Prince of Kung.*

Sir,

*Shanghai, July 16, 1875.*

ON receipt of the Imperial Decree of the 19th June, communicated to me by your Imperial Highness, by which the Governor-General Li Han-Chang was directed to repair post-haste to Yunnan, I despatched Mr. Grosvenor and his interpreter Mr. Baber to Hankow to present my compliments to his Excellency, and to assure him of the pleasure with which I had heard of his nomination. Mr. Grosvenor was at the same time to inform himself more precisely of the nature of the Governor-General's Mission, and, for the regulation of his own movements, of the possible date of his Excellency's departure for Yunnan.

Mr. Grosvenor returned to Shanghai on the 14th instant. The Governor-General Li had received him very courteously, but, in reply to his questions regarding the precise object of his Mission, his Excellency gave him to understand that his instructions pointed exclusively to the murder of Mr. Margary.

Of the attack on Colonel Browne's Mission he seemed scarcely to have heard, and,



although from one remark regarding the number of people accompanying Colonel Browne, it was apparent that he was not wholly uninformed of the check the expedition had sustained, he declared that inquiry into this was beyond the scope of his instructions from the Tsung-li Yamên. As to the safe passage of Mr. Grosvenor himself or of a new mission on the part of the Government of India across the frontier of Yünnan and Burma, the Governor-General declined to give an opinion, pleading that he was not a Yünnan official. He examined the two passports forwarded me by your Imperial Highness on the 30th of March last, but expressed some doubts as to their validity, on the ground that they were issued in my name, and that the impression of the Yamên's seal upon them was not sufficiently distinct.

I had the honour to inform your Imperial Highness a few days since that, on receiving the news of his Excellency Li's appointment, I had telegraphed to Her Majesty's Government that, in my opinion, it was a step in the right direction. On receiving Mr. Grosvenor's report, I have telegraphed again to state that I regard the situation changed. I have directed Colonel Browne to return at once to India to make his report to the Viceroy, and I have now to request that your Imperial Highness will explain to me why the Governor-General Li has been left without instructions to inquire into the attack on Colonel Browne by a Chinese force.

The attack took place upon the 22nd of February. Before the end of April letters mentioning the attack, without alluding to the murder of Mr. Margary, had been received by Chinese officials in Tien-tsin. Letters on commercial business passing between Shanghai and Yünnan are answered within ninety days. Her Majesty's Government will find difficulty in believing that by the end of June no Memorial should yet have been received at Peking from the Government of Yünnan touching the movement of a body of troops against a party of foreigners entering Chinese territory under passport in February.

Touching the allegation originally to be found in your Imperial Highness' despatch of the 14th of April, and now brought forward again by the Governor-General Li, that the persons accompanying Colonel Browne were more numerous than the terms of the passports warranted, I shall have more to say in due season. Meanwhile, I shall assume that the passports, which I received sealed from your Imperial Highness upon the 30th of March, are in order. Should they not be, I shall be obliged to your Imperial Highness to let me know in what particular they are held to be irregular.

I avail, &c.

(Signed) THOMAS FRANCIS WADE.

### Inclosure 3 in No. 27.

#### *Memorandum by Mr. Wade on the Yünnan Outrage.*

THE following Memorandum briefly exposes the case as between England and China in the matter of the Yünnan outrage.

The commercial relations formerly existing between British Burma and Yünnan having been restored by the suppression of the Mahometan rebellion, the Government of India became desirous of obtaining accurate information on the subject of Yünnan trade.

In the summer of last (1874), consequently, the Viceroy of India proposed to send a small mission from British Burma into Yünnan, and I obtained a passport for a mission of four persons with their suites, who were to be sent from the Burmese side, and another passport for an interpreter (Mr. Margary), who was to go through China to meet the Viceroy's Mission.

Mr. Margary was further provided with letters to the Governors of provinces through which he had to pass.

The officials in general assisted him kindly, and he duly arrived at Momein.

Here he found letters from the Agent of the Government of India stationed at Bamo, informing him that the Mission had not yet started. He accordingly pushed on to Manwyne, where he found Li-hsieh-t'ai. He sent a messenger thence to Bamo to inform the Agent there of his arrival, and in a few days his messenger returned with a guard of forty Burmese to protect him on his way to Bamo against the wild tribes inhabiting the country he had to traverse.

It is to be noted that Mr. Margary spent several days in friendly intercourse with Li-hsieh-t'ai at Manwyne. He spoke in warm terms of his reception by that officer.

In charge of his Burmese escort, Mr. Margary proceeded safely to Bhamo, reaching

that place about the middle of January 1875, but two days later than Colonel Browne, the officer placed at the head of the Indian mission.

The Viceroy of India being uncertain as to the length of time Mr. Margary's journey would occupy, and being unwilling to risk the chance of mistakes that might arise were the Mission to move forward to the Chinese frontier without an interpreter, had earlier telegraphed to me that it would not move until this want was supplied; and to prevent delay I had dispatched Mr. Allen by sea to Rangoon. He joined Colonel Browne a little later than Mr. Margary, and the whole party thus assembled consisted of the following members: Colonel Browne, Dr. Anderson, Mr. Ney Elias, and Mr. Interpreter Allen, composing the mission under the passport I had forwarded to the Viceroy; and Mr. Margary under the passport with which he had travelled through China.

Their suite was as follows: Mr. Margary had with him a Chinese teacher and servants, some of whom had been engaged at Shanghai, some at Hankow, some in Yunnan. I forget the precise number of these; but they were, if I mistake not, five or six. Mr. Allen had with him also two Chinese who had gone round with him from Shanghai to Rangoon.

Colonel Browne had four servants, three Indians, and one a Chinese born in British Burma. Dr. Anderson had with him three Indian servants, a Burmese servant who could speak the Chinese, and three Indian assistants possessing a certain amount of education who were to collect botanical and geological specimens. There was besides these a Chinese surnamed Li, believed to be a kinsman of Li-hsieh-t'ai, and two grooms.

Mr. Ney Elias had also two servants.

The whole company under the two passports, masters and followers, that were about to enter China would, accordingly, amount to from twenty to thirty persons.

To protect them against the tribes through whose country they had to pass up to the Chinese frontier, the Burmese Government promised a guard of Burmese soldiers. Our people proposed also to take a guard of fifteen sikhs, Indian soldiers, to the same point. The Burmese Government at first objected, and it was not until after some negotiation that it consented. The Burmese escort was to have been 300 strong, but did not in reality amount to half that number. Its precise number, however, is of no great consequence, as the escort was intended to go no further than the security of the expedition against an attack of the hill tribes might render necessary.

One of the party, Mr. Ney Elias, went alone by Maing-mo, following what is called the southern route; he was to rejoin Colonel Browne at Momein or Yung-ch'ang. Colonel Browne himself was to take the Manwyne route.

For carriage of the baggage it was necessary to engage the services of the hill tribes, and the delay occasioned by their laziness and extortion was such that it was not till the 6th of February that Colonel Browne and those with him were able to move forward from Bamo; nor did they reach the stream known as the Nam Phoung Khyoung, which is considered to be the boundary line between the tribes respectively subject to Burma and China, before the 18th of February.

On that day a Burmese arrived from Manwyne with a report that Li-hsieh-t'ai and the Chief of a certain tribe had conspired together to prevent the Mission entering China. Colonel Browne attached little credit to the story, and the following day, the 19th of February, Mr. Margary started for Manwyne, accompanied by his Chinese teacher and servants, and by Li, the kinsman of Li-hsieh-t'ai. After Mr. Margary's departure, a hill-man came in with a report that Chinese troops were being assembled at Manwyne under Yang-ta-jên, a Chinese official, who, in concert with the Chief before mentioned, was to attack our people.

On the 20th of February, however, Colonel Browne received letters from Mr. Margary, written *en route* to Manwyne, reporting the roads safe; and on the 21st Colonel Browne himself would have moved on to that town, but, some Chiefs of tribes having put difficulties in the way that delayed him, he eventually decided not to go till next day. His party remained on their camping ground between two villages.

In the evening the Burmese guard was again alarmed by observing some Chinese reconnoitring their position from a height above them.

The following morning, February 22, on rising, Colonel Browne perceived a continuous line of armed Chinese defiling towards the rear of his position along a high ridge to the right of his camping ground, and presently there arrived a friendly Chief with the news that Mr. Margary and the Chinese with him had been murdered the previous evening at Manwyne; that a large force of troops had been assembled at Momein to annihilate the foreigners; and that the troops moving along the ridge were but the advanced guard of a more considerable body. The Mission was, in fact, hemmed in by Chinese troops, north, south, and east of it. The ground on which it had passed the night was



surrounded by jungle, and the Chinese, creeping up from the rear, soon opened fire upon our people. Some of the bolder, emerging from a gap in the hill in that direction, advanced into the open ground waving guns and trident spears. They shouted out in Chinese that they were commanded by Shouk-goon (the sounds are doubtful), nephew of the great Li, that is, of Li-hsieh-t'ai, and calling on the Burmese to retire and leave the foreign devils to their fate.

The Sikh guard opening fire upon them, they fell back with some loss. The Burmese also fired, but they were badly armed, and did no execution. It is noteworthy that the Chinese never fired at the Burmese, and that even when retreating before the fire of the Sikhs, they continued shouting friendly advice to them. They did not venture near the Sikh guard again, but continued firing at it at long range from out of the jungle, in which they lay concealed till the afternoon. Colonel Brown then succeeded in getting the jungle fired in rear of the attacking force; and, as the flames spread, the Chinese rushed back to gain the ridge along which they had originally descended. They left some dead on the field, and the head of one of these was cut off by a hill-man, who brought it to Colonel Brown, observing that he might now perceive that his assailants were Chinese and not men of the hill tribes.

I shall here observe that Mr. Ney Elias, having proceeded by the southern route, had reached Maing-mo on the 15th of February, and had there found Li-hsieh-t'ai, as he, Li, affirmed, with 300 men. Li-hsieh-t'ai strongly urged Mr. Elias to take another line, on the ground that the route he proposed to follow would be exposed to danger from the savages of different tribes. Mr. Elias suggested that Li should give him a guard, but he declined. One of the chiefs showed himself equally opposed to Mr. Elias' advance, stating plainly that, passport or no passport, he could not enter China. Mr. Elias, seeing that between Li and the aforesaid Chief, his way was barred by this route, determined to try another, lying through Burmese territory more to the south, that was recommended by Li, and on the 18th he accordingly quitted Maing-mo.

Before going farther, it should be noted that he had offered a rifle and a quantity of cartridges as a present from the chief of the mission to Li-hsieh-t'ai. Li accepted it and sent a messenger with a card by way of acknowledgment, but he presently sent another to return the rifle, and beg that his card might be sent back. This was on the 16th of February. Early on the morning of the 18th, however, there came a civil message from Li, requesting that Mr. Elias' servant might come over to him. The servant (by name Wang Hsiu-shuang) waited on him, and in due time came back to state that Li had only declined the rifle because he thought Mr. Elias was angry with him, and that he would like to have it. Mr. Elias sent it him by the servant, and Li again returned his card.

The incident is thus detailedly stated, because the card subsequently played an important part.

As has been stated, Mr. Elias left Maing-mo on the 18th of February, but he made but little way. He could not get carriers. Different reports reached him, to the effect that Li and the Burmese had combined to stop the whole mission, and that Li had soldiers stationed at various points throughout the country of the tribes.

On the 27th certain chiefs of tribes (Tsawbwas) arrived with a short note from the Political Agent at Bamo, announcing the murder of Mr. Margary and the repulse of the expedition, and conveying instructions to Mr. Elias from Colonel Browne to hasten back to Bamo. Mr. Elias hastened back accordingly.

In the attack on Colonel Browne's party, happily, though some had been wounded, none had been killed, and the whole party being reassembled, returned by Bamo to Mandalay.

On his way, Colonel Browne became possessed of two letters from Burmese at Manwyne to Burmese, who were with him. The letters were not handed to him or betrayed to him, but being delivered in his presence, he requested permission to peruse them. One was to the effect that, on the 21st of February, the Chinese had killed Mr. Margary, and five Chinese with him in Manwyne. The writers were naturally in great alarm. The other letter, written a little later apparently than the first, from the same Burmese, was to the effect that three Chinese officials (whose names are given) had been sent to Manwyne from the authorities of Momein, and had told the writers to warn the person written to that he must not be with Colonel Browne on the 23rd of February, as on the night of that day the foreigners were to be attacked. If, said the letters, this advice were not taken, and the person addressed or any one with him were in consequence killed or wounded, the Chinese must not be blamed. These letters, it must be observed, were not written for the eye of a foreigner. They were written by Burmese to Burmese, in great alarm. They fell into Colonel Browne's hands, as above described, by accident. The person who received them did not wish to communicate them to him.

On the 25th of February, Colonel Browne further obtained statements of a Burmese who had gone on with Mr. Margary to Manwyne on the 19th of February, to the effect that, on the 21st, Mr. Margary had been killed by Chinese officers, who, at the same time recommended the deponent to send and tell the Burmese who were with Colonel Browne's party to separate from them. The man accordingly left Manwyne on the 22nd of February, and on his road met the Chinese officer Shouk-goon (who, according to the Chinese that attacked Colonel Browne, was the Commander of the attacking party), and he, Shouk-goon, said that he was coming back from the fight with the English.

Another Burmese, whose deposition was taken on the 1st of March, affirmed that about the 16th of February, he had heard rumours of the collection of a Chinese force to go on the hills. On the 21st, he had seen Mr. Margary in Manwyne. He had seen him several times. Two Chinese officials, whose names are given (the same names as those mentioned in the second letter), came down from Momein. They had a force with them stated to amount to from 3,000 to 4,000 men. These troops were not quartered in Manwyne, but the noise they made was heard outside the walls. In the evening of the 21st, he heard that Mr. Margary had been killed by the order of the officers who had come from Momein, and on the 23rd, the day after the attack on Colonel Browne, the news having arrived that the Burmese escort had stood by the English in the fight, and that the head of a Chinese officer had been cut off by a Burmese, the feeling on the part of the Chinese against the Burmese became so strong that they were advised by the people of the place to fly, and he, the deponent, fled accordingly.

On his return to Mandalay, Colonel Browne found that, on the 16th of February, the Resident had written to inform him that, according to a Report current in the palace, a large body of Chinese was ready to oppose the Mission's entrance into China.

Towards the end of May, Mr. Ney Elias' servant (Wang-Hsiu-Shuang), a native of Han-Yang, who had been originally one of Mr. Margary's suite, arrived in Shanghai. He told a somewhat rambling story, and, when cross-examined, contradicted himself a good deal. On one occasion, however, he stated with tolerable precision, the route that he had followed after parting with his master, and he adhered throughout to one of his first statements, namely, that his safety along the frontier of Yunnan was due to the influence of Li hsieh-t'ai. In his deposition, taken before the Consul at Hankow, he had spoken of a safe-conduct, but this at Shanghai he explained to mean the card of the hsieh-t'ai; that card which Li hsieh-t'ai had sent to Mr. Elias in acknowledgment of his present on the 18th of February at Maing-mo.

Whether Li hsieh-t'ai was present with the troops who tried to cut off Colonel Browne below Manwyne on the 22nd of February, there is nothing to show. On the 18th, as Mr. Elias shows, Li was at Maing-mo, according to his own account, with 300 men. Manwyne is not 100 miles from Maing-mo. He would have had time enough, therefore, to fall back on Manwyne after Mr. Ney Elias' departure. The troops who attacked, however, shouted out that their leader was Shouk-goon, the nephew of Li, and they would hardly have done this had Li himself been with them.

It further appears that, so far back as the 26th of January a Chinese merchant, whose name is given, informed the Political Agent at Bamo that 4,000 Chinese troops were waiting the arrival of the British Mission at Momein, on the route which it had originally been intended that it should take. Mr. Margary had been so well received on his passage through Yunnan that the Agent discredited the report as hardly worth recording.

[Extracted from the journals and papers of Colonel Horace Browne and Mr. Ney Elias.]

July 17, 1875.

(Signed)

THOMAS FRANCIS WADE.

No. 28.

*Mr. Wade to the Earl of Derby.—(Received September 13.)*

My Lord,

*Shanghai, July 24, 1875.*

I HAVE the honour to inclose copy of a note embodying the instructions contained in your Lordship's telegram of the 23rd June.

I have, &c.

(Signed)

THOMAS FRANCIS WADE.



## Inclosure in No. 28.

*Mr. Wade to the Prince of Kung.*

Your Imperial Highness,

*Shanghai, July 12, 1875.*

I HAVE the honour to refer to the correspondence that has earlier passed between your Imperial Highness and myself on the subject of the Yünnan outrage; in particular to my note of the 24th of March, to your Imperial Highness's note of the 29th of March, and to my answer of the same date; lastly, to two notes addressed me by your Imperial Highness upon the 14th of April, and to my reply to these dated the 28th of the same month.

The second of your Imperial Highness's notes of the 14th closed with a request that the observations it contained might be made known to my Government, and that an answer might be sent direct from the Foreign Office to your Imperial Highness, and in my reply of the 28th I informed your Imperial Highness that the whole of the correspondence that had passed between us in relation to the Yünnan question, together with every Memorandum and Minute of conference affecting it, had been sent home on the 17th of April, and that translations of your Imperial Highness's notes of the 14th of April, as well as copy of my reply of the 28th, would follow upon the 3rd of May. Whether the Earl of Derby would comply with your Imperial Highness's request, or would convey his opinion in the usual way—through myself—must be left, I observed, for his Lordship to decide.

The mail of the 17th of April reached England on the 7th of June, that of the 3rd of May on the 21st of June, and on the 23rd of June the Earl of Derby telegraphed instructions to me to the following effect. I was to state to your Imperial Highness that the whole correspondence above particularised had been carefully considered by Her Majesty's Government; that my conduct was entirely approved and the terms of my note of the 28th of April fully concurred in; that nothing short of thorough investigation would satisfy Her Majesty's Government; and that at any such investigation British officers must be present. Past experience has shown this to be necessary. As regarded indemnity, if the Chinese Government showed a disposition to facilitate inquiry, Her Majesty's Government would defer further consideration of that question until the result of the inquiry were declared, but the right was reserved of bringing forward the claim for indemnity if the Government were to see reason to be dissatisfied with the conduct of the inquiry.

I received the telegram upon the 27th of June, but have detained this communication until Mr. Mayers, the Chinese Secretary, who was absent on leave, should return, as I proposed forwarding it by his hand.

To prevent possible misapprehension as to the nature of the message now transmitted to your Imperial Highness, I think it well to add a few words of explanation. The method of conducting public business in England differs materially from that in use in China. In China the despatches of the provincial Governors and other high officers are addressed directly to the Sovereign. So I presume would be the reports of Chinese Ministers residing at foreign Courts. Her Majesty's Representatives abroad (*"Ch'in ch'ai ta ch'en"*), no matter how high their degree, correspond with the Secretary of State for Foreign Affairs. The Secretary of State lays their correspondence before the Sovereign, and, when occasion demands, this is further considered by the Secretary of State and his colleagues, the other members of the Government. The answer addressed to the Minister concerned, though signed by the Secretary of State for Foreign Affairs alone, represents the opinion arrived at on the question under review by Her Majesty, assisted by her responsible advisers, and goes forth consequently as the decision of Her Majesty's Government.

The Earl of Derby's message of the 23rd of June must be read by this light. Strictly speaking, whenever the words "British Government" or "my Government" occur, they should be translated by words requiring an elevation *à la Chinoise* above the column. But although careful to observe forms of this kind when speaking of the Chinese or any other foreign Government, I do not, as a rule, think it necessary to be equally punctilious when speaking of my own. The essential in this instance is that the intimation I have been instructed to make should be accepted by your Imperial Highness, not as proceeding simply from the Secretary of State for Foreign Affairs, but as conveying the decision of Her Majesty's Ministers after perusal of the correspondence submitted to the Queen; and my desire to make this plain to your Imperial Highness must be my excuse for occupying so much space upon the subject.

I avail, &amp;c.

(Signed)

THOMAS FRANCIS WADE.

No. 29.

*The Earl of Derby to Mr. Wade.*

Sir,

*Foreign Office, September 16, 1875.*

I HAVE received and laid before the Queen your despatch of the 24th of July, forwarding further correspondence on the subject of the Yünnan outrage; and I have to state to you that your proceedings are approved by Her Majesty's Government.

I am, &c.  
(Signed) DERBY.

No. 30.

*The Earl of Derby to Mr. Wade.*

Sir,

*Foreign Office, September 16, 1875.*

I APPROVE the note of which a copy is inclosed in your despatch of the 24th of July, which you addressed to the Prince of Kung on the 12th of that month, communicating to him the substance of my telegram of the 23rd of June respecting the Yünnan outrage.

I am, &c.  
(Signed) DERBY.

No. 31.

*The Earl of Derby to Mr. Wade.*

Sir,

*Foreign Office, September 29, 1875.*

I RECEIVED on the 27th instant a telegram from you without date, stating that the Yamên would not promise any of the guarantees you had asked for, and that you had informed them on the preceding day that you should at once withdraw the Legation, and report to Her Majesty's Government that it was useless to send a Secretary to Yünnan, because you did not look for any better results than in the case of the Tien-tsin massacre.

You added that the Prince had answered that he would call on you on the 21st instant, and that you thought it probable that he would then make some overture.

It is not quite clear from your telegram, or from the preceding one, whether the guarantees to which you refer relate exclusively to the proposed inquiry in Yünnan, or include the fifth, sixth, and seventh demands reported as having been made by you, in your telegram of the 8th instant. I have therefore addressed a telegram to you, inquiring what are the guarantees which the Yamên will not promise, and on account of which you have threatened to withdraw the Legation; and I have at the same time authorised you to repeat to the Chinese Government that Her Majesty's Government insist that a thorough and satisfactory inquiry should be held in the presence of British Officers into the circumstances of Mr. Margary's death, and of the attack upon the mission under the command of Colonel Browne: the inquiry to be followed by the punishment of the persons implicated in these transactions.

Her Majesty's Government consider that there should be no further delay in instituting this inquiry.

I am, &c.  
(Signed) DERBY.

No. 32.

*The Earl of Derby to Mr. Wade.*

Sir,

*Foreign Office, October 21, 1875.*

I HAVE received and laid before the Queen your telegraphic despatches of the 7th and 18th instant, reporting that you had obtained satisfactory guarantees from the Chinese Government, and that you were about to despatch Mr. Grosvenor to Yünnan.

The guarantees in question included the appointment of a Mission to England,



charged with a letter of apology, and a promise that escorts should be provided to and across the frontier of Burma, for a Mission of inquiry, and for a new Indian Mission, as well as the issue of the Decree of the 28th of September, directing the Yamèn to confer with the other departments of the Government on the question of personal intercourse with the foreign Representatives; and of that of the 10th of October, calling the attention of the Provincial Governments to the passport clause of the Treaties, and to the appointment of a High Commission, consequent on the murder of Mr. Margary.

You state further that you have been officially informed by Prince Kung that the Inspector-General of Customs has been instructed to report fully on the taxation of foreign trade, and that a competent Chinese officer will be appointed after the termination of the inquiry in Yünnan to confer with a British official on the regulation of the Burma frontier trade.

These arrangements appear to Her Majesty's Government to be satisfactory.

If faithfully carried out, they cannot fail to conduce to the establishment on a better footing of the relations between Great Britain and China, and they will give the Chinese Government an opportunity of showing their willingness to atone, as far as possible, for the injury done to a friendly power, by the attack made on its officers, when employed on a peaceful mission, and the unprovoked murder of one of them.

I have great pleasure in conveying to you the entire approval of your conduct by Her Majesty's Government, and their high appreciation of the ability and perseverance with which you have conducted the recent negotiations.

I have authorized you by telegraph to inform the Chinese Government of this approval.

You will add that Her Majesty's Government will watch attentively the manner in which the engagements taken by the Chinese Government are carried out, and that the re-establishment of the good understanding between the two countries, which has been disturbed, in consequence of the conduct of Chinese officials, will depend on the fidelity with which the promises now made on behalf of China are performed.

I am, &c.  
(Signed) DERBY.

No. 33.

*Mr. Wade to the Earl of Derby.—(Received October 25.)*

My Lord,

*Tien-tsin, August 26, 1875.*

I HAVE the honour to forward translation of despatch, dated 31st July, from the Prince of Kung.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure in No. 33.

*The Prince of Kung to Mr. Wade.*

(Translation.)

*July 31, 1875.*

ON the 26th instant the Prince received Her Majesty's Minister's despatch to the effect that the British Government had learned that Li Ssu-t'ai-yeh, whose nephew was the officer in command of the troops ordered by the Momein authorities to attack Colonel Browne's mission in February last, had proceeded to the capital of Burma and was being honourably entertained by the King, and that the King, when requested to explain by an officer of high rank sent to the Burmese capital, gave as a reason that he had been sent as Ambassador to China with the Proclamation announcing the accession of the Emperor of China.

The Prince has to observe, with reference to the murder of Mr. Margary, that the Governor of Yünnan has recently addressed a Memorial to His Majesty in which he states that Brigadier-General Yang Yü-kä, and Taotai Ch'ên Hsi-ch'ên report that, to the south-west of Sanda, there is a hill town, the local name of which is Man<sup>2</sup> Yün,<sup>3</sup> nearly the same as the two sounds Man<sup>3</sup> Yün.<sup>2\*</sup> They at once went themselves to Man Yün, and there discovered that, in the 11th moon of last year (December 1874), a foreigner called Ma, on his way from T'êng Yüeh (Momein) to Burma had passed through Man Yün, and

\* The difference is in the tones under which the syllables are respectively ranged. The characters represented by the first Man<sup>2</sup> Yün<sup>2</sup> are the correct ones.

again, when in company with some foreign officers and soldiers from India, whom he had met by appointment, and who came for the first time, the whole party reaching Yünnan in the month of February. Fearing lest they should be attacked and robbed by the savages, they first prepared presents which they sent by some Burmese to the Heads or Chiefs of these people. They at the same time hired (or instructed the Burmese to hire) savages, mules, and horses to transport their effects. Moved by the sight of their property, the savages forthwith mustered in large force, barred the road, and robbed and plundered [the foreigners], first killing the foreign official Margary, who was acting as guide [to the party].

On the same day [that the Memorial arrived, the Council] had the honour to receive the Imperial Decree: "Let the Governor-General of the Hu Kwang Provinces, as before ordered, go with all speed to Yünnan, and ascertain with precision the particulars of this case. Let Liu Yüeh-chao also, as soon as he has arrived at Yünnan, put himself in communication with Ts'ên Yü-ying, and let a further report be carefully made by them." Respect this.

Just as the Prince was preparing a despatch on this subject, he received Her Majesty's Minister's communication above quoted. As in duty bound, his Highness now communicates, in reply to Her Majesty's Minister, the main particulars of the inquiries made and action taken in this case by the Governor of Yünnan, and when the Governor-General of the Hu Kwang Provinces shall have reached Yünnan, and reported to His Majesty the facts ascertained by him, in concert with the Governor-General and Governor of that Province, it will be his duty to write again, and more fully, to Her Majesty's Minister.

In the case of the Proclamation announcing the accession of an Emperor to the Throne, it has hitherto been the custom for the various Provincial Governments to depute officers to convey these missives; an Imperial Commissioner is not specially appointed for that purpose. The Yamên have no official communication or report on record [from which they can learn] whether or no Li was one of the officers despatched to Burma on this occasion by the Provincial Government of Yünnan, but they have already written to the Governor-General and Governor of the Province to inquire.

No. 34.

*Mr. Wade to the Earl of Derby.—(Received October 25.)*

My Lord,

*Tien-tsin, August 26, 1875.*

IN my interview on the 10th August, I promised to submit to the Grand Secretary Li a statement in writing of the measures which I should regard as sufficiently guaranteeing a change in the foreign policy of China as to justify me sending Mr. Grosvenor to Yünnan, and in remaining myself at Peking. His Excellency Li was *officieusement* to make what use he thought best of my statement.

I inclose copy of my paper, which I sent in English by the hand of Mr. Grosvenor.

I have, &c.

(Signed)

THOMAS FRANCIS WADE.

Inclosure in No. 34.

*Memorandum for the Information of his Excellency the Grand Secretary Li.*

BEFORE coming to the situation, as I stated it yesterday, I shall mention that in March last, having obtained passports to enable Mr. Grosvenor and an interpreter to proceed to Yünnan for the purpose of investigating the circumstances of the attack on Colonel Browne's Mission, and the murder of Mr. Margary, I kept back these gentlemen for various reasons, one of the chief being that I desired first to have all the information the Government of India could supply. I wished also to compare with this any information the T'sungli Yamên might receive.

Colonel Browne himself joined me on the 9th June, and the papers completing the story of the Yünnan affairs, as reported to the Government of India, reached me a few days after.

It is unnecessary here to repeat that story at length. The essential is that for weeks before the attack on Colonel Browne, both Chinese and Burmese were aware that Chinese troops were preparing to attack it; that it was attacked on the 22nd February



by Chinese troops ; and that, as soon as these had been repulsed, letters were intercepted from Burmese to Burmese, to the effect that troops had come down from Momein with Chinese officials, and that these officials had warned the Burmese writing the letters to caution their correspondents to keep away from the British, as the British were to be annihilated.

About the middle of June a Decree appeared in the Gazette directing Li, Governor-General of Hu Kwang, to proceed to Yünnan, on what Mission the Decree did not state, but as the Prince of Kung presently forwarded me the Decree, I assumed that it had reference to the Momein outrage.

I had, meanwhile, applied to the Viceroy of India to direct Colonel Browne also to proceed to Yünnan, and I now sent Mr. Grosvenor up to Wu Ch'ang to wait upon the Governor-General Li.

It is needless to repeat here the substance of his Excellency's replies to the questions Mr. Grosvenor had been instructed to ask. It has been stated again and again to Li Chung-t'ang in the last few days by Mr. Mayers and myself. The Governor-General's tone was completely unsatisfactory. A despatch from the Prince, received a short time before Mr. Grosvenor's return from Wu Ch'ang, was equally so, for it declared that no information had been received from Yünnan, except that two officers had been sent to the scene of the crime to make inquiries. This was six months after the affair in Momein had occurred, news of which had been received in Tien'tsin before the end of April, and was current in Ssu-ch'uan and Hu Peh in May.

I at once decided that Colonel Browne should go back to India to report to the Viceroy, and having sent Mr. Mayers on before me, I myself came north with Mr. Grosvenor.

At Tien-tsin, I received two despatches from the Prince of Kung, dated 31st July, both of which the Chung T'ang has seen. One of them embodies a report from Ts'ên, the Acting Governor-General of Yünnan, to the effect that Colonel Browne's assailants were men of the Hill tribes, tempted by the prospect of plunder ; and, while expressing a hope that the officers I may send to Yünnan will be warned not to force their way into danger, His Imperial Highness implies that the Chinese Government may not be able to guarantee their safe passage through the country on the borders of Yünnan.

With the facts reported to the Indian Government before me, with the fact also that under protection of his passport, Mr. Margary found no difficulty whatever in traversing the country in question last January, it was impossible that the Prince of Kung's words should not increase the misgiving I had already felt regarding the *bona fides* of the Chinese Government.

In a word, if Mr. Grosvenor is to go anywhere, it is to the Manwyne country he must go. But, with the Governor-General Li's declaration on the one part, and the Prince of Kung's on the other, I do not see that his mission, if he were to go, would be of any practical effect whatever. The Grand Secretary Li's assurances on the subject are all that I could desire. I am sure that he will write to his brother the Governor-General Li to do all in his power to assist Mr. Grosvenor ; but his Excellency, however high his position, however much respected by natives and foreigners the words that may fall from him, is, by his own admission, not invested with responsible authority in this question. How, indeed, should he be ? I ask the question, as the Grand Secretary is aware, without the smallest intention to be disrespectful to an official in every way so distinguished as himself. But his Excellency must remember that the Government of China, when it appointed the Tsung-li Yamên, announced to the Powers in Treaty relations with China that the administration of foreign affairs would be vested in the Yamên, and it is to the utterances of the Yamên and the action taken by it that my own Government will not fail to look ; and unless I can receive from the Yamên such guarantees as I can report to my Government are, in my opinion, sufficient to prove that the Chinese Government is not trifling with this question, I am resolved that Mr. Grosvenor shall not proceed to Yünnan. I shall myself wait at Tien-tsin at least until I receive replies to letters I have written to the Prince of Kung and Mr. Mayers' report of what has passed at the Yamên.

The Grand Secretary has asked me what are the guarantees I require. I have stated both to the Yamên and to the Grand Secretary that the redress of the particular wrong now under discussion is not more necessary than that the Chinese Government should give immediate proof of its determination to fulfil the Treaties ; not only of such of their provisions as affect commercial interests, but those also which engage the Government of China to accept the same relations with foreign Powers as foreign Powers accept one with another.

I put forward these two propositions in general terms on the 19th March, at the

same time that I urged the payment into my hands of a sum of money to be applied as Her Majesty's Government might see fit, and that I demanded passports. The accordance of passports which would enable the bearer to be present at the investigation in Yünnan I explained from the first was the indispensable condition of all. When I found a disposition to avoid the discussion of these, I withdrew all beside but the question of indemnity. An attempt being subsequently made to prove that, by Treaty, the right of joint investigation was limited to the Treaty ports, I withdrew from all discussion even of the indemnity, and confined myself solely to the demand for passports.

The whole of my proceedings having been emphatically approved by Her Majesty's Government, I return to my starting point.

Firstly. If the Chinese Government desires to secure itself and foreign Powers against the danger of such misunderstandings as that now impending, it will improve the present condition of diplomatic intercourse, beginning, of course, at home. It is to this end that I urged the Prince of Kung to give me some evidence that something would be done towards the observance of Article IV of the Treaty. If it be objected that minority of the Sovereign and an Empress Regency are obstacles to complete fulfilment of its provisions, the answer is that improvement of the position of foreign Representatives in Peking is nevertheless perfectly practicable. As in other capitals in which foreign Legations are established, there can be intercourse with the higher officials, not for purposes of business. Foreign affairs can be discussed only with the Department which they concern, the Tsung-li Yamên, to wit; but in evidence of friendly feeling and of a disposition to conform to foreign usages as prescribed by the Treaty.

Secondly. The Chinese Government will make a serious effort to give effect to the Articles of the Treaty affecting trade both at the ports and inland. Its present order of proceeding is at some points crippling, at others destroying the trade, not less to the loss of the revenue than to the injury of the foreign merchant.

The measures of reform indicated above include almost all that, on general grounds, can be called for. To come now to the Yünnan outrage.

Thirdly. The Prince of Kung ought immediately to give me an assurance in writing that such an escort shall be provided Mr. Grosvenor as will guarantee his safety as far as Manwyne, and, if he desire to return by Rangoon, as far as the point on the frontier nearest Bhamo. This point is but a few miles from Manwyne.

Fourthly. A similar assurance should be given me regarding the escort of a fresh mission from India.

There can be no difficulty about these two conditions. If Mr. Margary could go and return unmolested without an escort of Chinese troops, *à fortiori*, can any one be protected by such an escort.

Fifthly. The Prince of Kung, as soon as he receives my report of the outrage, should immediately lay it before the Throne, and a Decree should be issued requiring the Acting Governor-General Ts'en to state how it happens that nearly six months after the event no more precise information has been forwarded to Peking than that contained in the Memorial of the Acting Governor-General, quoted in the Prince's despatch of the 31st July.

Both the Memorial and the Decree in reply should be published in the "Gazette," care being taken, if the British Government or the British Minister is spoken of, that no form is employed other than should be used in speaking of a power the equal of China.

Sixthly. A Minister of high rank should be at once sent to England to express the regret of the Chinese Government at what had occurred. He should have instructions, going and returning, to pass through India, and to ascertain from the Viceroy of India the nature of the conditions under which the Government of India would desire to see the trade of British Burma placed by the Chinese Government.

Seventhly. The Decree directing this Minister to proceed to England should also appear in the "Gazette."

(Signed) THOMAS FRANCIS WADE.

Tien-tsin, August 11, 1875.

No. 35.

Mr. Wade to the Earl of Derby.—(Received November 2.)

My Lord,

Tien-tsin, August 26, 1875.

IN continuation of my earlier despatches of this date, I have the honour to forward copies of two despatches I have addressed the Prince of Kung, the first containing a



narrative of the Yünnan outrage, compiled with great care from the papers in my possession and from the information furnished me by Colonel Browne, the second being a commentary on the first.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure 1 in No. 35.

*Mr. Wade to the Prince of Kung.*

(Extract.)

*Tien-tsin, August 20, 1875.*

I HAVE the honour to acknowledge your Imperial Highness' communication of the 31st July, replying to my question concerning the mission of Li-hsieh-t'ai to Burma.

This note incidentally quotes a Memorial of the Governor of Yünnan, which embodies the report of the Tsung-ping and Taotai whom he had called upon to state what had occurred at Manwyne in February last.

According to these officers, they had visited Manwyne and had there discovered that a foreigner named Ma had passed through Manwyne, on his way from Momein to Burma, in December 1874; that he by-and-bye returned, in company with a number of officers and soldiers from India; that this party reached Yünnan in February last; that they endeavoured, through the Burmese, to propitiate the Chiefs of the tribes whose country they were about to traverse; but that the savages of these tribes, tempted by the sight of the things belonging to the foreigners, waylaid them in force and robbed them, first killing Mr. Margary, who was acting as guide.

I shall request your Imperial Highness' attention to a very different version of the story. As your Imperial Highness is aware, Colonel Browne, the head of the mission repulsed below Manwyne last February, was directed by the Viceroy of India to come to China and to place himself in communication with me. My conversations with Colonel Browne and the perusal of his journals and other papers forwarded me by the Viceroy of India, enable me to state what befel the mission with tolerable precision.

I shall first advert briefly to Mr. Margary's passage through the province of Yünnan. When I obtained passports for the Indian mission that was to enter Yünnan from the Burmese side, I obtained not only a passport for Mr. Margary, whom I was sending overland to interpret for the mission, but also letters which he was to carry from the Tsung-li Yamên to the Provincial Governments, through whose jurisdiction he would have to travel. From his journal, which is in my hands, it would appear that when he reached Yünnan-fu, the capital of the Province of Yünnan, upon the 27th November, he found that the Governor Ts'ên, Acting Governor-General of Yünnan and Kwei-chow, had been prepared by letters from the Tsung-li Yamên for his approach. At Mr. Margary's request his Excellency forwarded a letter for him to Colonel Browne, via Yung-ch'ang, and he sent a couple of officials, a military man named Yang, and a civilian named Chou, with him to that city. It is clear that the Governor Ts'ên could be in no doubt as to the official character of "the foreigner named Ma," or of the nature of his errand. It is plain that he knew Mr. Margary was to return by way of Yünnan-fu, for although he had excused himself from receiving him in person on the ground of his being busy, he sent to him to say that when he came back he would receive him. In a letter to me Mr. Margary dwelt much on the attention shown him by the Acting Governor-General Ts'ên.

It is not necessary to follow Mr. Margary step by step to Momein. On the 3rd of January he wrote from that place to the Agent of the Government of India residing at Bhamo, who received his note on the 9th. He then pushed on to Nan-t'ien, the headquarters of Li Chên-kuo, otherwise Li, the fourth brother, who appears to have the rank of "hsieh-t'ai" in the district in question. Li hsieh-t'ai was absent on duty at Manwyne. Mr. Margary came up with him there, and was hospitably received by him.

Manwyne, described in the Acting Governor-General Ts'ên's despatch as a hill town, is some sixty miles or more from Bhamo. The country between the two places is inhabited by wild tribes, known as Kakhyens, Shans, and others; many of them, as is shown by the Memorial of the Acting Governor-General Ts'ên, published in 1872, subject to the Emperor of China. Some, however, have their home on Burmese territory. The river Nam-hpoung is regarded by the Chinese as the boundary of China. Colonel Browne was informed that, when some time ago the Burmese were erecting guard-houses to protect the road from Bhamo, Li hsieh-t'ai and other Chinese officials

protested against their construction on the Chinese side of the river. There are five of these guard-houses between Bhamo and the Nam-hpoung.

Manwyne is the nearest town in China to the Burmese frontier by this route, and when Chinese officials proceed by this road to Burma, it is at Manwyne that they are handed over to a Burman guard for protection.

From Manwyne accordingly Mr. Margary despatched a Chinese messenger to Bhamo. The man returned in a few days with a guard of forty Burmese, and, escorted by this guard, Mr. Margary and the Chinese with him arrived at Bhamo on the 17th of January. It is especially to be noted that they met with no trouble or difficulty on their way.

The Viceroy of India, being uncertain when Mr. Margary might reach Bhamo, and fearing that if Colonel Browne's mission were to advance without an interpreter, trouble might arise, had resolved that the Mission should not move forward unless it had an interpreter with it, and had telegraphed to me some weeks previously to this effect. To prevent delay I had sent Mr. Allen, another interpreter, round by way of Rangoon. Colonel Browne, however, had been in Bhamo but a couple of days when Mr. Margary appeared. Mr. Allen joined them a few days later.

The whole party thus assembled consisted of the following members: Colonel Browne, Dr. Anderson, Mr. Ney Elias, and Mr. Allen, the Interpreter, representing the Mission, travelling under the passport sealed by the Tsung-li Yamên on my application last summer, and forwarded to the Viceroy of India. Mr. Margary travelled under the passport with which he had crossed China.

Their suite was as follows:—

Mr. Margary had with him a Chinese teacher, and five or six Chinese servants, some of whom had been engaged at Shanghai, some at Hankow, and some in Yunnan.

Mr. Allen had with him also two Chinese who had accompanied him from Shanghai to Rangoon.

Colonel Browne had four servants, three Indians, and a Chinese, surnamed Li, who stated himself to be a near relative of Li-hsieh-t'ai. He had been born in British Burma, and spoke both Burmese and Chinese.

Dr. Anderson, the medical man, had with him three Indian servants, a Burmese, who could speak Chinese, and three Indian assistants, possessing a certain amount of education, who were to assist in collecting botanical and geological specimens.

Mr. Ney Elias had two servants. This gentleman had formerly been in business in China. He had travelled much in the interior, and so lately as 1872 had returned to Europe via Siberia by way of Uliassutai.

There were besides two grooms (I imagine Indians) to look after the horses of the party about to enter China.

The whole company under the two passports would accordingly amount, masters and followers, to from twenty to thirty persons.

To protect them against the tribes before mentioned, who are notorious thieves, the Government of Burma promised a guard of 300 men, who were to go with them as far as Manwyne. The number really furnished, according to Colonel Browne, was about 130. They were to appearance not soldiers, but militia or villagers, armed for the occasion. Our people proposed to take also a guard of fifteen Indian policemen, armed and drilled like soldiers, with an officer to command them. These Sikhs were to be sent back either from Manwyne or from any point farther inland at which a Chinese authority might be found ready to assure the security of the Mission.

The mission was to move through the hill country by two routes; Mr. Ney Elias was to take what is known as the southern route, and to rejoin Colonel Browne at Momein or Yung-ch'ang. Colonel Browne and the rest had intended to proceed by the Sawuddy road, but, as will be seen in the sequel, they found this impossible, and they eventually took the road that leads via Tsekaw, Poulyne, Ponce, Manwyne, Sanda, and Nantien to Momein.

I shall here mention that on the 26th January, before the mission started, a Chinese merchant, who appears to have been in the habit of going and coming, informed the Political Agent at Bhamo that 4,000 Chinese troops were waiting at a place, which he named, to attack the mission. This merchant, whose name is given, was known to the Agent, but the Agent, conceiving that the friendly treatment experienced by Mr. Margary when passing through Yunnan, sufficiently discredited any report of the kind, though he entered it in his journal, put no faith in the assertion.

Colonel Browne, as I have said, intended to follow the Sawuddy route, and he had hoped to start from Sawuddy about the 28th January, but he found it impossible to get the baggage of his mission carried forward. For the transport of this baggage it was necessary to engage the services of the tribes, and he found the chiefs on the Sawuddy



route so obstructive that he was obliged, after a short experience, to return from Sawuddy to Bhamo, and proceed by Manwyne. The tribes on that side, under the influence of Burmese officials, came to terms, but their laziness and extortion was such that he did not get away from Bhamo until the 6th February, and it was the 18th before he reached the fifth and last guard-house on the western bank of the Namhpoung, mentioned above as the common boundary of China and Burma. It is at this point a rapid river, some 30 feet broad, fordable in most places.

There had been a rumour the day before among the savages that there would be trouble along the road farther on, and on the 18th a Burmese, on his way south, came into camp and stated that, according to the King of Burma's cotton agents residing at Manwyne, which place he had left that morning, Li-hsieh-t'ai and a certain Chief had combined to prevent the entrance of the foreign mission into China. The Burmese, be it observed, told this not to Colonel Browne, but to certain Burmese who were in his suite. Colonel Browne had met the man earlier in the day, and, in answer to his questions, had been assured by him that everything was all right at Manwyne. He heard subsequently from his own Burmese what their countrymen had told them.

What the main object could be in assuring him that the road was secure, while in the same breath he warned his fellow countrymen that it was unsafe, Colonel Browne could not divine, still he was unwilling to believe his story, and Mr. Margary scouted it as ridiculous. It was eventually decided that he, Mr. Margary, with his Chinese teacher and servants, should start the next day for Manwyne, accompanied by the man named Li, before spoken of as the relative of Li-hsieh-t'ai. A guard of Burmese and hill-men (Kakhyens) were to escort them to Manwyne.

Mr. Margary had not long left the camp, on the morning of the 19th February, when a Kakhyen came in and stated that he had left Manwyne the day before, and that he had there heard of a force being collected by one Yang-ta-jên, a Chinese official, to oppose the advance of the mission, and that the Chief of one of the tribes (the Tsairai Tsawbwa) was to act with Yang-ta-jên. The same man stated that Li-hsieh-t'ai was not at Manwyne, but at Maing-maw, on the southern route.

On the 20th Colonel Browne received letters from Mr. Margary and the man named Li (who could write Burmese). They had reached the town Tsarai, the head-quarters of a tribe, and reported the roads up to that point safe, and the people everywhere civil. Colonel Browne accordingly crossed the Nam-hpoung with the mission, and commenced the ascent of the hills to the east of it, passing through various villages, of which the Chiefs showed themselves friendly, until he reached a camping-ground on a considerable elevation, some distance from Tsarai.

Here the man named Li came back to the mission from Tsarai. The Chief, he said, had received him with open arms when he found him to be a relative of Li-hsieh-tai; but he described him as discovering some anxiety lest he should get no share of the money which was to be paid as black-mail to the tribes; and it was finally arranged that he, Li, should return next morning to the Chief with a present, and with a promise that he should not be a loser.

On the following morning, 21st February, Li went forward to Tsarai with the present. The mission was also to have started early, but difficulties were made by some of the Chiefs, on whose aid they were dependent for the transport of their baggage; and, after waiting for some hours, Colonel Browne and his companions decided to leave the baggage in camp, and to go with their Sikh guard as far as Tsarai, to try and quicken the Chiefs. On their way they were overtaken by a Kakhyen, who begged them to return to the camp, as their Burmese wished to consult them about moving the baggage. They were, by this time, so near Tsarai that Colonel Browne preferred to go on to that place, promising that, his visit paid, he would go back to camp if necessary. He found Tsarai to be a village situated on high ground, from which the cliffs about Manwyne were visible, and, at one time, he had thoughts of proceeding at once to that town, but the manner of the Tsarai Chief and his people awakened his suspicions. This Chief's son, too, it had been agreed, was to remain at a particular spot as a hostage for the safety of the mission; and a report was current that he had disappeared. Colonel Browne therefore resolved to wait for the morrow's news; and leaving behind at Tsarai a Chief who had made very friendly professions to obtain information, he and the rest of his mission made their way back to the camp, which they reached in the evening.

Here they found that the tale of the Kakhyen who had overtaken them in the morning was false; that the detention of their baggage was due, not to the objections of their Burmese, but to the refusal of certain Chiefs to let it move. The reason of this obstructiveness will, I think, be plain in the sequel.

Another unpleasant piece of intelligence was that some Chinese had been seen recon-

noitring the position of the camp from the height above it. This had so alarmed the Burmese that they had thrown up a couple of breastworks.

The ground on which the Mission was encamped was overlooked, more or less, by hills on three sides; in front, to the right, and in rear, to the left—that is, westward. A steep slope descended almost precipitately to the River Nam-hpoung.

On rising on the morning of the 22nd February, Colonel Browne found a continuous line of armed Chinese defiling along a ridge on his right towards the rear of his camping ground, where, on a hill covered with jungle, a strong force had established itself. It soon became apparent that, except on the steep to his left, by which it was impossible to attack him, he had enemies on all sides; and, while in doubt as to what could have provoked their hostile action, the chief of friendly professions came up the steep on his left with the news that Mr. Margary and all the Chinese with him had been murdered the previous evening at Manwyne; that a force of 4,000 men had been assembled by Chinese officials at Momein to annihilate the Mission, and that the men then approaching were but part of an advanced guard of 800 men. He had endeavoured, he said, to reach the Mission earlier to give the alarm, but had been detained, and deprived of his pony. He had, however, escaped, and had come on on foot. While he was speaking the Chinese, creeping up through the jungle in the rear, began to fire on the Mission, and the chief disappeared.

Some of the bolder Chinese advanced through a gap in the hills in rear of the position into the open ground, waving guns and trident spears. They shouted out in Chinese that they were commanded by Shouk-goon (the sounds are doubtful), nephew of the great Li (that is, of Li-hsieh-t'ai), and called on the Burmese escort to retire, and leave the Ka-la to their fate. The word Ka-la, or Koo-la, appears to be opprobriously used on the border as Kuei-tzu is in Peking and other parts of the Empire.

The Sikh guard opening fire upon these Chinese soon drove them back with some loss. The Burmese also kept up a fire; but they were badly armed, and did no execution. It is noteworthy that throughout the Chinese never fired at the Burmese, and that even when retreating before the fire of the Sikhs they continued as before to shout their advice to the Burmese to keep away from the foreigners. After their first repulse they did not venture near the Sikhs again, but continued firing at them at long range from out of the jungle, where they were concealed, till the afternoon. Colonel Browne then, with the aid of some friendly savages whom he bribed, succeeded in getting the jungle fired in rear of the attacking force, and as the flames spread the Chinese rushed back to gain the ridge along which they had originally come down. On examining the ground after their flight, Colonel Browne found that works had been thrown up during the night across the road in his rear, so as to intercept his retreat. The Chinese had left some dead on the field, and the head of one of the latter was cut off by a hillman, who brought it to Colonel Browne, observing that he might thereby be satisfied that his assailants had been Chinese, and not men of the hill tribes.

While these things were passing on the middle route, Mr. Ney Elias, though happily he escaped alive, was meeting with all sorts of difficulties on the southern route. He had reached Maing-maw on the 15th February, at which town he found Li-hsieh-t'ai, as Li affirmed, with 300 men. Li-hsieh-t'ai urged Mr. Elias to take another line, on the ground that the route he proposed to follow would be exposed to great danger from the savages of different tribes. Mr. Elias suggested that Li-hsieh-t'ai should give him a guard, but he declined.

One of the chiefs in that neighbourhood showed himself equally opposed to Mr. Elias's advance, stating plainly that, "passport or no passport," he could not enter China on that side.

Mr. Elias, seeing that between Li and the aforesaid chief his way was completely barred, determined to try another road lying through Burmese territory further south, and that was recommended by Li-hsieh-t'ai, and on the 18th February he moved on from Maing-maw in the direction indicated.

Before going farther it should be noted that he had offered a rifle and a quantity of cartridges as a present from the Chief of the Mission to Li-hsieh-t'ai. Li accepted the present, and sent a message with a card by way of acknowledgment, but he shortly after sent to say he must decline the rifle, and to beg that his card might be given back. This was on the 16th February. Early on the morning of the 18th, however, there came a civil message from Li, requesting that Mr. Elias's servant might come over to him. The servant, by name Wang Hsiu-shuang, waited on him, and in due came back to state that Li had only declined the rifle because he thought Mr. Elias was angry with him, and that he would like to have it. Mr. Elias sent it to him by the servant, and Li again returned his card.



The incident is thus detailedly stated because the card subsequently played an important part.

As has been stated, Mr. Elias left Maing-maw on the 18th February, but he made but little way. He could not get carriers. Different reports reached him to the effect that Li and the Burmese had combined to stop the whole mission, and that Li had soldiers stationed at various points throughout the country of the tribes.

On the 27th February certain Chiefs of tribes (Tsawbwaw) overtook him, with a short note from the Political Agent at Bhamo, announcing the murder of Mr. Margary and the repulse of the expedition, and conveying instructions to Mr. Elias from Colonel Browne, to hasten back to Bhamo. To Bhamo Mr. Elias proceeded accordingly.

To return now to Colonel Browne. In the attack of the 22nd February, though some of his people were slightly wounded, no one happily was killed, and the Chinese having drawn off in the manner I have described, the Mission commenced its retreat towards Bhamo.

On the following morning, 23rd February, two letters were brought in from the King of Burma's Cotton Agent at Manwyne, addressed to a Burmese official attached to Colonel Browne. The first letter stated that Mr. Margary had arrived in Manwyne on the 20th February, and that on the 21st he and five Chinese with him had been killed by the Chinese. It added that the writers were themselves in great fear, as the Chinese officials suspected them.

The second letter stated that three Chinese officers, whose names are given, and who had been sent to Manwyne by the Momein authorities, had desired the writers to impress on the Burmese addressed that on the 23rd February he must separate himself from the English Ka-las whom he was escorting; that he must either leave them and go back, or stay in some place a mile or two apart. If he did not, and came to be wounded or killed, he was not to blame the Chinese. If the Ka-las followed him he was not to give them shelter. The attack would be made on the night of the 23rd. From 3,000 to 4,000 men were collecting and surrounding the party.

These letters, be it observed, were not intended for the eye of a foreigner. They were written in the Burmese language, by Burmese officials, to a Burmese official, who did not desire to show them to Colonel Browne. He, however, requested a sight of them, and being a competent Burmese scholar, when he had read them he caused copies of them to be taken. I append Chinese translations of these two letters.

It was now evident that the Mission had not been expected to arrive so soon in the neighbourhood of Tsarai, and that its appearance there on the 19th, and Mr. Margary's advance to Manwyne, had precipitated the attack of the Chinese force.

The messenger who brought the letters further stated that a force of Chinese and Kakhyens was even then on its way to the fourth guard-house on the Burmese side of the Nam-hpoung, to cut off the Mission. The Mission pushed on consequently to the ground in question, and learning there that Kakhyen scouts had been seen reconnoitring the neighbourhood, continued their march until they reached the second guard-house, where they halted for the night.

Colonel Browne, still reluctant to believe that Mr. Margary and those with him had perished, did his best to induce some one to obtain information from Manwyne, but neither friendly Kakhyens nor Burmese could be persuaded to make the attempt. All the roads, they said, were carefully watched by Chinese troops. Colonel Browne was especially anxious about Li, the reputed relative of Li Hsieh-t'ai; and, in the opinion of some of the friendly Kakhyens, this man might have been protected by the Tsarai Chief in consideration of his relationship to Li Hsieh-t'ai, but this, they said, was not certain, because Li Hsieh-t'ai had given orders that if anyone, even his own son, was found siding with rebels or Ka-las, he was to be killed.

Colonel Browne therefore proceeded on his way to Bhamo, passing through various villages in which Chinese traders reside. On his way up these men had shown themselves civil enough. There was now a marked change in their demeanour. He made the same observation in Bhamo, which place he at last reached on the 26th February.

Here he remained for some days, vainly hoping for information, but receiving none of consequence, except the report brought in by certain Kakhyens that Yang-ta-jên, the Chinese official at Manwyne, before spoken of, had punished the Chinese officers engaged against the mission on the 22nd for having allowed any one to escape. His orders had been positive that everyone connected with the expedition, European, Chinese, or Burmese, was to be killed.

The muleteers in charge of the baggage of the mission had decamped the moment the Chinese opened fire on the 22nd February, and the mission had given it up for lost. A small portion had, however, been recovered by the Burmese and brought into Bhamo

on the 26th, and on the 3rd March the Chief of friendly professions made his appearance with a good deal more. There were some articles of value missing, but on the whole less than was expected.

One of the Burmese sent into Manwyne with Mr. Margary on the 20th February escaped, and on rejoining Colonel Browne made a deposition, dated 25th February, copy of which I append. This, it will be seen, affirms that Mr. Margary and five Chinese were killed on the 21st February by Chinese officers, and that Chinese officers desired certain Burmese named to send to their countrymen to separate from the Ka-las; that he, the deponent, was sent on the 22nd with letters to the above effect; that on the road he met Li Shouk-goon, who told him that he was coming back from the fight between the English and the Chinese and Kakhyens.

It should be noted that this man gave the name of the Chinese who spoke to him at Manwyne.

I append also the deposition of another Burmese belonging to the King's Cotton Agency at Manwyne, who arrived at Bhamo on the 26th February, the same day as the mission.

Some days before Mr. Margary's arrival in Manwyne he had heard rumours of the collection of Chinese troops upon the hills. He saw Mr. Margary in Manwyne on the 21st February. Two Chinese officials, whose names he gives, came down from Momein with a force of from 3,000 to 4,000 men. He did not see this force, but heard the noise it made outside the town at night. He gives the details that had reached him of the death of Mr. Margary and his people, observing that they were wounded, not by local savages or Chinese, but by order of the Chinese officials who had come from Momein. Another Chinese official, the day after the fight, he states to have vowed vengeance against the Burmese for having taken part with the English in the affair of the 22nd. The Burmese, with the exception of a few, had therefore fled from Manwyne.

His deposition closes with a rumour of particular significance—to wit, that the heads of Mr. Margary and those killed with him had been taken up to Momein after having been exposed in Manwyne.

After a few days' rest at Bhamo, Colonel Browne passed on to Mandalay. He there found that on the 16th February the Resident, Captain Strover, had written to inform him of a report current in the Palace to the effect that a large body of Chinese was in readiness to oppose the mission's entrance into China. The Resident's letter had not reached him as he was on the line of march. Other information he obtained satisfied Colonel Browne that the preparations of the Momein officials, which so nearly proved fatal to him, had been perfectly well known in the capital of Burma for days before the attack on the 22nd February.

I have one word to add about Mr. Elias. Towards the end of May his servant, Wang Hsiu-shuang, a native of Han-yang, who had been originally one of Mr. Margary's suite, arrived in Shanghae. He told a somewhat rambling story, and, when cross-examined, contradicted himself a good deal. On one occasion, however, he stated with tolerable precision the route that he had followed after parting with his master, and he adhered throughout to one of his first statements, namely, that his safety along the frontier of Yunnan was due to the influence of Li Hsieh-t'ai. In his deposition, taken before the Consul at Hankow, he had spoken of a safe conduct, but this at Shanghae he explained to mean the card of the Hsieh-t'ai; that card which Li Hsieh-t'ai had sent to Mr. Elias in acknowledgment of his present on the 18th February at Maing-maw.

Whether Li Hsieh-t'ai was present with the troops who tried to cut off Colonel Browne below Manwyne on the 22nd February, there is nothing to show. On the 18th, as Mr. Elias records, Li was at Maing-maw; according to his own account, with 300 men. Manwyne is not a hundred miles from Maing-maw. He would have had time enough, therefore, to fall back on Manwyne after Mr. Ney Elias's departure. The troops who attacked, however, shouted out that their leader was Shouk-goon, the nephew of Li, and they would hardly have done this had Li himself been with them.

This closes what I have to say in the way of narrative. Mr. Mayers, the Chinese Secretary, is instructed to wait upon the Ministers of the Yamên to explain anything that may not be clear to their Excellencies.

The conclusions at which I arrive from the matter now before your Imperial Highness I shall have the honour to submit to your Imperial Highness in a separate despatch.



## Inclosure 2 in No. 35.

*Mr. Wade to the Prince of Kung.*Sir, *Tien-tsin, August 21, 1875.*

IN continuation of my despatch of yesterday, I have the honour to submit to your Imperial Highness the following observations:—

That an act of treachery and violence was committed on the frontier of Yünnan last February cannot be disputed, and the first question to which Her Majesty's Government is looking for an answer is upon whom is the responsibility of the act to be laid?

It is impossible for the Government of China, Central or Provincial, to deny that it was aware of the approach of the mission from India. Not only was the seal of the Tsungli Yamên affixed to the passports under which Mr. Margary and the mission were to travel, but Mr. Margary carried with him letters to the Provincial Government through whose jurisdiction he had to pass, and at Yünnan-fu he found the Acting Governor-General Ts'ên already in receipt of letters from the Yamên in accordance with which, apparently, his Excellency, after treating him with great consideration at Yünnan-fu, caused him to be escorted as far as Yung Ch'ang. Before the mission left Bhamo, Mr. Margary wrote both to Li-hsieh-tai at Nantien and to the authorities at Momein to give notice of his return.

In your Imperial Highness's despatch of the 31st July I am requested to remember that when the passports were applied for last year by Mr. Mayers, the Ministers of the Yamên referred in the course of conversation to the recent conclusion of the civil war in Yünnan, and warned Mr. Margary that the route could not be clear throughout.

If the Ministers held this opinion, they could only have derived it from the reports of the Provincial Government. The Acting Governor-General Ts'ên would, in that case, have been as alive as they to the contingency of danger by the way, and even without instructions, surely, it would have been his duty, if he thought the country unsafe, to look to it that no harm befel the foreign mission within his jurisdiction. But if the Ministers of the Yamên entertained the apprehensions they expressed to Mr. Mayers last summer, it is to be assumed that in the letters from the Yamên that had reached the Acting Governor-General before Mr. Margary's arrival, he did receive instructions to assist and protect the mission. What else could have formed the subject of the Yamên's letters? And if he did receive instructions, how came he so imperfectly to respect them? Was his estimate of the insecurity of the route different from that of the Yamên as expressed to Mr. Mayers? Did he think the road safe? That the road is not at all times insecure is proved by the fact that in January, without any escort at all, Mr. Margary travelled unmolested from Momein to Manwyne, and from Manwyne with a Burmese escort through the country of the tribes to Bhamo; while scarce a month before, a Burmese Embassy, leaving Bhamo on the 15th December, had passed up by a parallel route to Momein. Mr. Margary was informed as he travelled southwards that some of the Burmese were but a little distance to his left, and they entered Momein shortly after he had left that city. The Embassy was bringing tribute to the Emperor of China. If the tribes were tempted to attack Colonel Browne, as the Tsung-ping Yang and the Taotai Chên affirm, by the sight of the things his party were carrying with them, why was their cupidity not equally excited by the far more valuable articles that must have been in charge of the tribute-bearers? Either the road was not so insecure as the Ministers of the Yamên imagine, or the Governor-General had taken steps for the protection of the Burmese tribute bearers. If so, why was not equal care extended to the subjects of a Treaty Power entering China under passport?

These questions, it must be admitted, are a natural rejoinder to the explanations tendered by the Tsung-ping Yang and the Taotai Chên, namely, that the attack on Colonel Browne and the murder of Mr. Margary were the act of the hill tribes, tempted by the prospect of plunder.

With the facts communicated in my despatch of yesterday before me, your Imperial Highness will understand that it is quite impossible for me to attach the smallest credit to the report of these two officers. I cannot regard it as otherwise than as an aggravation of the atrocity for which my Government is demanding satisfaction. I must add that the transmission of so idle an explanation at this juncture is calculated seriously to impair any confidence that might have been felt in the good faith of the Chinese Government. Savages of the tribes under Chinese jurisdiction no doubt took part in the attack on Colonel Browne; but according to the evidence, oral or written, of persons some of them Chinese, some Burmese, some Chiefs or savages of the tribes, speaking or writing in different localities, widely apart, and without the possibility of a concerted design to

mislead, Chinese authorities made preparations to waylay the British Mission on a particular day; Chinese authorities urged Burmese to warn Burmese to separate themselves from the Mission upon that day; and Chinese authorities, having caused Mr. Margary to be murdered in Manwyne, moved troops, who were recognized by Colonel Browne to be Chinese soldiers, to attack the Mission. These are the facts which I find to be substantiated by the testimony of the Chinese dealer at Bhamo a month before the attack; by the observation of Burmese to the Resident at Mandalay, 100 miles from the scene of action, six days before the attack; by the letters and depositions which came into Colonel Browne's possession immediately after the attack. It is noteworthy, also, that different witnesses agree on other points of special interest—as to the number of troops assembled, for instance; as to the names of the chief actors, Yang-ta-jân and the Hsieh-t'ai Li. Are we to set aside a series of statements so consistent, and to adopt in its place the story told by Yang-tsung-ping and Ch'ên Taotai?

I repeat that the transmission of such a report at this juncture is most unfortunate. Her Majesty's Government will call to mind that when first informed of this outrage the Minister of the Yamên declared the appointment of a special Commissioner to be out of the question; my application for passports to enable my own Agents to take part in the inquiry was resisted on the ground that the Treaty provisions regarding joint investigations was limited to cases at the open ports. When I threatened to break relations if I was refused them, I obtained the passports I demanded; but a fortnight later, on the 14th of April, your Imperial Highness addressed me a despatch in which I was requested to observe that their issue in this instance was a special concession, and was not to be referred to as a precedent. Meanwhile, although towards the end of April a high officer at Tientsin had shown (spoken to) Mr. Mayers (of) a letter received from an official in Yunnan referring to the attack on Colonel Browne, yet when Mr. Fraser sent some weeks later to the Yamên to ask for news, the Ministers could only tell him that two officers had been sent to the spot to make inquiries. All this time the murder is known even to the common people in Ssu Ch'ên and Huonan. It is the subject of placards and caricatures in the capital of the former province and in Yo-chow. In the latter a British missionary is taunted with it by the Prefect. At length, full three months after the date of my first communication, that of the 12th March, Li, Governor-General of Hu-kuang, is directed by Decree to proceed as a Special Commissioner to Yunnan. I send Mr. Grosvenor, the secretary, who had been designated to represent my Legation in the inquiry, to wait upon his Excellency Li, who informs him that he has no instructions from the Yamên about the attack on Colonel Browne; his sole concern is with the murder of Mr. Margary. His Excellency Li inspected Mr. Margary's passport last year, yet he throws doubt upon the validity of those now submitted to him by Mr. Grosvenor as documents issued by a foreign official, the seal upon which—the Yamên's seal—he observes is insufficiently clear. It manifestly became my duty not to send forward Mr. Grosvenor without some clearer understanding of the recognition of his office. I came north with him accordingly, and at Tientsin I received the two despatches of the 31st July now under acknowledgment, in which your Imperial Highness has acquainted me with the report of the officials Yang and Ch'ên. This is all that the Tsungli Yamên is enabled to communicate to me five months after the attack upon our Mission.

I presume that the Acting Governor-General Ts'ên intended this report to be believed, or he would not have ventured to make it the subject of a Memorial to the Throne, and I presume that your Imperial Highness intends that I should accept it as credible, or it would not have been embodied in a despatch to my address. Read with Mr. Grosvenor's account of his interview with the Governor-General Li but a few days before your Imperial Highness' despatch was written, it will not fail to provoke the gravest suspicions on the part of Her Majesty's Government.

This at least is the effect of the coincidence on myself. As soon as the Decree nominating the Governor-General Li appeared in the "Gazette," I telegraphed to the Earl of Derby that I thought there was a change for the better in the situation. When five days later your Imperial Highness formally communicated the Decree to me, I telegraphed again in confirmation of that opinion. But on Mr. Grosvenor's return from his visit to the Governor-General Li, I telegraphed that there appeared to me a change for the worse; and now having carefully considered your Imperial Highness' despatches of the 31st July, with other circumstances that it is not necessary for me here to enumerate, I have telegraphed once more to state that the Chinese Government, I am persuaded, is trifling with me, and that I have therefore detained Mr. Grosvenor. I have not the slightest apprehension that any harm will befall Mr. Grosvenor, but it is my duty to see that my Government is not befooled in a matter so serious.

I shall take the liberty of requesting your Imperial Highness to reperuse the long



and very earnest despatch which I had the honour to address your Imperial Highness on the 9th July, 1870, when I first learned that one of the unfortunate Sisters of Mercy massacred at Tientsin was a British subject. The Tientsin massacre, I urged, was but the natural outcome of a system of policy which leaves the people of China in ignorance of the claim of foreign nations to be regarded as their friends and equals, while it encourages hostility to the foreigner, if not by precept, yet continually by example. I insisted strongly upon the necessity, if China would avoid the danger, from misunderstandings with all nations united, to which adherence to her exclusivism exposed her, without loss of time to set about a revision of her ancient system. No attempt worth the name has been made to revise it, and not a year, nay, scarcely a month, passes by without some Legation having to complain of either the hostility, or the obstructiveness, or the indifference of one Chinese official or other. The outrage in Yunnan surpasses in many particulars any on record in China. Certain officials in the Momein jurisdiction have deliberately perpetrated an act of war upon a British Mission, whose security should have been assured by the passports I obtained for it from the Tsung-li Yamén, and under the direction of these same officials, the interpreter of the mission has been murdered. We require to know by whom and for what reason this act of war was done. Who were the instigators? Was the act due to the hostility or carelessness of the instructions sent by the Tsungli Yamén to the Acting Governor-General Ts'ên, or to the hostility or carelessness of the Acting Governor-General himself, or to the hostility of Yang-ta-jên whoever he may be? It is of the official authorities whose hostility or carelessness is responsible for the movement of troops from Momein to Manwyne, that satisfaction for the murder of Mr. Margary will be required, not of the miserable soldier or savage who was only obeying orders when he killed him.

But this satisfaction rendered, there will still remain to be dealt with the far larger question of security for the future. The fountain of these crimes has to be stopped. The Central Government has to declare boldly its condemnation of that hostility to the foreigner, which at present its officials make it a rule to exhibit, the consequences of which make themselves felt in outrages such as that of Tientsin and Yunnan. Simple protestations of its purpose hereafter to do this or that are of no avail. I have heard them reiterated any time these fifteen years, and if at such a crisis as the present I were to accept a profession of good intentions in lieu of acts that I could regard as really proving the intention of the Government to reform its foreign policy, I should be lending myself to the continuance of the vicious system I so condemn with the all but certainty that it would reproduce itself in some form of atrocity next year, next month, perhaps next week. I should then be met, as in June 1870, and in last March, with the usual assurance that the new atrocity had taken the Chinese Government quite by surprise, and this explanation would be held quite sufficient to excuse its usual dilatoriness of action until such time had elapsed as might secure the delinquent a mitigated penalty. The Yunnan affair is too grave an affair to be hushed up or compromised. The guilty must undoubtedly be punished, but the Chinese Government must look beyond this case to the establishment of relations with foreign Powers under such conditions as will more surely guarantee their duration unbroken.

My own further action in the matter must be regulated by the action your Imperial Highness may see fit to take.

I avail, &c.

(Signed) THOMAS FRANCIS WADE.

No. 36.

*Mr. Wade to the Earl of Derby.—(Received October 25.)*

My Lord,

*Tien-tsin, August 26, 1875.*

MR. MAYERS, the Chinese Secretary, having proceeded to Peking, in accordance with his instructions, waited on the Ministers of the Yamén, and was, on the 20th instant, specially invited to meet their Excellencies for the purpose of discussing the Memorandum of Propositions I had sent in to the Grand Secretary Li on the 11th instant, copy of which was inclosed in my previous despatch of this date.\*

I inclose copy of Mr. Mayers' translation of the Yamén's memorandum, drawn up as a rejoinder to mine.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

\* No. 34.

## Inclosure in No. 36.

*Memorandum from the Tsung-li Yamên in reply to Mr. Wade's Memorandum of August 11, addressed to the Grand Secretary, Li Hung-chang.*

(Translation.)

1. RELATIONS of intercourse between foreign representatives at Peking and Chinese high officials at the capital.

On this subject it has to be observed that the treatment of all affairs connected with the international relations between China and foreign countries belongs exclusively to the Tsungli Yamên, in concert with the various foreign Representatives. It is of course right that the Ministers of the Yamên should hold intercourse with the Representatives of foreign Powers, but beyond this none of the high officers of the Chinese Government at Peking are charged with any responsibilities in connection with foreign affairs. Moreover, according to the rules (or precedents) heretofore established, Chinese functionaries should not hold intercourse with foreigners, and it consequently behoves them not to be in relations with the foreign Representatives at Peking. Now, in the present instance, Mr. Wade having declared that [what he proposes is] in no wise for purposes of business, but in evidence of friendly feeling, the clause above referred to shall be discussed with a view to a satisfactory result on Mr. Wade's return to Peking.

2. Effect to be given to the Treaty as regards trade at the ports and in the interior.

The wording of the XXVIIIth Article of the Treaty, the 7th Article of the Supplementary Rules, and of the various Regulations bearing on the subject of trade with the interior of China, is of such a nature as to elucidate each the other's meaning. Uniform compliance with the provisos therein contained should be enjoined at every port. [The proposal contained in] this paragraph can, as a matter of course, be carried into effect. On Mr. Wade's return to Peking, however, discussion must be held, with a view to a satisfactory solution as to the further question in relation to the present order of proceeding on the part of the Chinese Government how the most advantageous course is to be adopted [*lit.*, how detriment is to be guarded against and benefits secured] to the greater advantage of mercantile interests and the public revenue.

3. Question of escort for Mr. Grosvenor in Yunnan.

Mr. Grosvenor is the officer who proceeds to Yunnan to be present at the trial, for whom the Yamên has already given a passport, and a delegate has been appointed by the Superintendent of the northern ports to accompany him on his journey. Mr. Wade now demands that an escort be provided to ensure his safety. This paragraph can of course be complied with. The Yamên will [*lit.*, it will be the duty of the Yamên to] give notice to the Government of Yunnan to detail an escort on Mr. Grosvenor's arrival in the Province, to escort him from point to point and protect him so that no danger may befall him.

4. Escort for future mission from India.

It will be necessary that officers from India about to enter Yunnan from the side of Burma should, before commencing their journey, give notice to the frontier officers in Yunnan of the time at which they may arrive at a certain specified point, as well as of the numbers of the party and their attendants. The frontier officers will certainly afford them the most active protection. Mr. Wade will, it is hoped, communicate the above remarks to the Viceroy of India, and the Yamên will write in emphatic terms to the Government of Yunnan to provide an escort at such time as may be necessary, in order to secure the most perfectly satisfactory results.

5. Mr. Wade's report of [the Yunnan outrage] should be immediately laid before the Throne and a decree should be issued, &c.

In reply it has to be observed that it is the practice in China, in cases where Commissions of Inquiry are held relating to occurrences in the Provinces, that not until report has been made to the Throne announcing the completion of the inquiry is a Decree publicly promulgated, and the memorial reporting the particulars of the inquiry issued for publication. In cases where Decrees are issued before the case is concluded, they are communicated [through the Grand Council], and neither they nor the memorials on which they are based are published. In the present case the fact is that the Governor-General and Governor of Yunnan were commanded by Decree to investigate and deal with the matter. At a later stage, owing to a length of time having elapsed without any results being shown, the Governor-General Li was appointed to proceed to the spot and investigate and deal with the case. Whether or no the Government of Yunnan have been dilatory in their action it will be at the same time for the Governor-General



Li to ascertain, and to take action accordingly. The Yamên now proposes, on the one hand, to memorialise for a Decree commanding the Governor-General and Governor of Yünnan to use all promptitude in ascertaining and reporting on the real facts of the case, and forbidding any more delay on their part, and, on the other hand, to request, at the same time, that the Governor-General Li be commanded to proceed with all despatch to his destination in Yünnan, to the end that the case may be speedily brought to a conclusion.

6. That an Envoy be sent to England, and that he should diverge from his route to visit Calcutta.

The intention that Envoys should be sent from China to foreign countries has already for some time past been entertained, but, no suitable persons being forthcoming for the moment, it has not been possible to carry it into immediate execution. With reference, now, to the occurrence which has taken place in Yünnan, an officer can, as a preliminary step, be sent to England for the sole purpose of cementing friendly relations, and of declaring that what has taken place in Yünnan was an occurrence unforeseen by the Central Government (or Sovereign). The officer sent on a mission, however, as bearer of a missive of greeting to Her Majesty the Queen of England from His Majesty the Emperor of China, would be bound to proceed straight to England, and deliver his letter in person, in token of due respect. Moreover, any arrangements that might be undertaken, with reference to frontier trade with Yünnan, are beyond the scope of the provisions of the Treaty relating to the ports on the coast. The local circumstances must be examined before negotiations can be entered into. This is not a subject upon which an officer sent abroad as Envoy could be sufficiently well-informed. It will be necessary to wait until the Yünnan affair has been disposed of, and the local circumstances thoroughly examined, whereupon [the question can be] deliberated upon with a view to satisfactory results.

7. Publication of the Decree appointing an Envoy to proceed to England.

The question as to the appointment of an Envoy has been explicitly dealt with in the preceding paragraph. It must, however, be added that it is not open to the servants of His Majesty the Emperor to make suggestions regarding his Decrees. On the Decree appointing an officer having been received the Yamên will forward a copy, reverently made, for the information of Mr. Wade.

*August 22, 1875.*

### No. 37.

*Mr. Wade to the Earl of Derby.—(Received October 25.)*

My Lord,

*Tien-tsin, August 27, 1875.*

IN my note of the 21st instant to the Prince of Kung, copy of which was inclosed in my despatch of the 26th instant, I have told his Imperial Highness that I could not allow Her Majesty's Government to be "befooled."

As a rule, I carefully abstain from the use of words that I should not employ in correspondence with the officers of a civilized Government. In the present instance I have a reason for my phrase. The Chinese are in the habit of appealing to my known sympathy with the difficulties of the Government, my interest in China, &c. The word that is chosen to translate "befooled" in my despatch, taken with the text, will recall to the Chinese reader an answer given by Confucius to the question of one of his disciples who asked whether the benevolent man was pledged, if he heard that some one was drowning in a well, to jump in to save him. "Certainly not," said Confucius; "the good man may be taken in, but must not allow himself to be 'befooled.'"

I have, &c.

(Signed) THOMAS FRANCIS WADE.

### No. 38.

*Mr. Wade to the Earl of Derby.—(Received October 25.)*

(Extract.)

*Tien-tsin, August 27, 1875.*

I SHOULD have mentioned that the Grand Secretary Li called on me on the 23rd instant, a few hours after I had received a newspaper telegram reporting the Queen's Speech.

I drew his Excellency's attention specially to the paragraph in which Her Majesty referred to the Yünnan outrage, and, at my suggestion, the Singapore interpreter took a copy of the passage.

## No. 39.

*The Earl of Derby to Mr. Wade.*

Sir,

*Foreign Office, October 30, 1875.*

I HAVE received your despatch, of the 26th of August, together with its inclosures, and in conveying to you my approval of the written statement submitted by you to the Grand Secretary Li, I have at the same time to request you to convey to Mr. Grosvenor my approval of the manner in which he carried out your instructions on the occasion of the visit paid by him to that official at your desire.

I am, &c.  
(Signed) DERBY.

## No. 40.

*The Earl of Derby to Mr. Wade.*

Sir,

*Foreign Office, November 6, 1875.*

I HAVE received and laid before the Queen your despatch of the 26th of August, and I have to convey to you the approval of Her Majesty's Government of the two notes addressed by you to the Prince of Kung on the subject of the Yünnan outrage, copies of which are inclosed in your above-mentioned despatch.

I am, &c.  
(Signed) DERBY.

## No. 41.

*Mr. Wade to the Earl of Derby.—(Received November 8.)*

(Telegraphic.)

*Shanghai, November 8, 1875.*

GROSVENOR Mission left Hankow 5th instant. All well.

## No. 42.

*Mr. Wade to the Earl of Derby.—(Received November 8.)*

My Lord,

*En route to Peking, September 9, 1875.*

AS I earlier reported, Mr. Mayers left Tien-tsin for Peking on the 10th August, to present certain despatches in person to the Ministers of the Tsung-li Yamên, and to furnish their Excellencies with whatever explanations they might require.

Mr. Mayers' reports of his interviews with the Chinese Ministers have already been forwarded to your Lordship.

The despatches he carried with him were four. The first embodied the reply I had received from your Lordship approving my correspondence of March last, on the subject of the Yünnan outrage, and instructing me to insist upon reparation. The second inclosed a Memorandum of various matters of complaint for which redress had been required in the last few months. The third complained of the unsatisfactory conduct of the Governor-General Li Han-ch'ang, when Mr. Grosvenor was sent up the river to wait upon him. The fourth complained of the delay in obtaining satisfaction for an attack upon some of our Student Interpreters when they were visiting a temple on the Po Hua Shan, a well-known hill some miles west of Peking, a few weeks ago.

The last case is still to be closed. I inclose translations of the Prince of Kung's replies upon the subjects of the first and third.



The transmission of these translations has been unavoidably delayed. Mr. Mayers' reports from Peking will have shown how fully his time was occupied during his stay there.

I recalled him to Tien-tsin on the 30th August.

I have, &c.

(Signed)

THOMAS FRANCIS WADE.

Inclosure 1 in No. 42.

*The Prince of Kung to Mr. Wade.*

(Translation.)

*Peking, August 22, 1875.*

THE Prince received on the 16th instant the British Minister's despatch of the 12th July, referring to the correspondence that has earlier passed between himself and the Prince on the subject of the Yünnan outrage, stating that on the 23rd of June the Earl of Derby had telegraphed instructions to the effect that the British Minister's conduct of this affair was entirely approved; and adding that the communication was about to be forwarded by the hand of the Chinese Secretary, Mr. Mayers.

With reference to the remark which the British Minister's despatch contains, to the effect that "the method of conducting public business in England differs materially from that in use in China," the Prince would observe that the constitutional systems and the ordinances of Government prevailing in different countries do, indeed, vary one from the other, and are not susceptible of constrained uniformity; but yet, in the midst of their diversity, corresponding features are, nevertheless, seen to exist. Thus, for instance, in connection with the British Minister's remarks upon the manner in which the despatches of the Provincial Governors and other high officers are addressed directly to the Sovereign (the entire passage, down to the words "the decision of Her Majesty's Government" is here quoted from Mr. Wade's despatch), the Prince would observe that whenever the high Provincial authorities or the Metropolitan Boards and other Departments, including the Tsung-li Yamên, have matters to be laid before His Majesty the Emperor, a memorial is addressed to the Throne in the name either of one individual or of several individuals jointly, or in some cases of different departments acting in concert, whereupon, on the same day, [on<sup>d</sup>] a rescript being issued assenting to the propositions advanced, if the documents are not such as require to be issued for publication, the department concerned transmits a copy of the Imperial Decree, together with the memorial on which it is based, to the proper quarter, for reverent compliance with its commands. This is analogous to the method of procedure which is followed in England.

The British Minister further remarks that, "strictly speaking, whenever the words 'British Government,' or 'my Government,' occur in correspondence, they should be translated by words requiring an elevation *à la Chinoise* above the column. But although careful to observe forms of this kind when speaking of the Chinese or any other foreign Government, he does not think it necessary to be equally punctilious when speaking of his own." With reference to this point it remains to be observed that in their communications addressed to departments of equal rank in Peking or the Provinces, the Tsung-li Yamên, when referring to chiefs of any department, in all cases give due elevation to the characters employed, as a sign of proper respect. Still more careful are they in connection with their relations, so important in their nature, with the representatives of foreign Powers, to cherish at all times sentiments of respect.

It would be altogether foreign to their wishes, in any particular where the elevation of characters is needful, to entertain the slightest trace of disrespect in the transcribing of correspondence. Whenever the words "British Government" and "Chinese Government" occur in communications addressed to the British Minister, the former only are elevated, and the words "Chinese Government" are left undistinguished. As a general conclusion, it may be added that respect consists in the sentiments which are had at heart, and does not merely lie in the actual form and manner of words and writing. The system of procedure respectively followed by the Chinese and foreign nations cannot but have their points of difference; but the intention of respect is, in fact, one and the same.

In the relations which mutually subsist, the proper course is to feel confidence on either side in the points where both agree, and likewise to admit no suspicious feelings where diversity is shown. The British Minister's high intelligence will, doubtless, lead him to this conclusion. His statement contained in the despatch now under acknowledg-

ment that the Earl of Derby's intimation conveys the decision of Her Majesty's Ministers, after perusal of the correspondence submitted to the Queen, is respectfully noted by the Prince.

This communication is accordingly forwarded in reply.

Kuang Sü, 1st year, 7th moon, 22nd day.

Inclosure 2 in No. 42.

*The Prince of Kung to Mr. Wade.*

(Translation.)

*Peking, August 22, 1875.*

THE Prince received on the 16th instant the British Minister's despatch of the 16th July, stating that he had despatched Mr. Grosvenor and his interpreter, Mr. Baber, to Hankow, to wait upon the Governor-General Li, &c., &c., (a full résumé of the despatch here quoted).

With reference to these observations the Prince has to remark that the murder of Mr. Margary grew directly out of the fact that he had gone to meet Colonel Browne and accompany him from Burmah to Yünnan. In this affair, the investigation and action to be instituted must undoubtedly extend to all the circumstances that bear upon it. When the Governor-General Li saw Mr. Grosvenor, he was not yet in receipt of the documents of which copies have been forwarded to him by the Tsung-li Yamên, and for this reason it was that he did not possess a full knowledge of the details. As regards the remark which he is reported by the British Minister to have made respecting the passports, it has to be observed in reply that according to the usage hitherto prevailing, passports issued to any officers should be drawn up in conformity with Article IX of the Treaty, and with the precedents followed during a series of years past. The passports now in question were given by the Yamên as a concession beyond the limit of what is strictly right, in consideration of the relations of peace and amity so long prevailing. It was because the Governor-General Li noticed the present passports to be unusual in their form, and because the Yamên, moreover, had not communicated a copy of the documents to him at the time of their issue, that he was ignorant of the particulars concerning them, and it is not at all the case that he doubted their validity.

The remark made in the despatch of the 31st July to the British Minister, to the effect that the character of the people of Yünnan is aggressive and violent, coupled with the hope that the British officers composing the Mission would in no wise seek to insist upon proceeding to points to which direct access might be impracticable, was actually inspired by an earnest regard for friendly relations, and a more than ordinary desire to guard against danger. The Governor-General Li's reply that the duty of affording protection is incumbent upon the authorities of Yünnan, is a statement of the actual fact; and it will be the duty of the Yamên to write to the Governor-General and Governor of the Province, desiring them to provide efficient means of escort. The British Minister's observation, that on receipt of Mr. Grosvenor's report he considers the situation changed, seems to indicate doubts which are really not justified.

With reference to the remark that "the allegation found in the Prince's despatch of the 14th of April, and now brought forward again by the Governor-General Li, that the persons accompanying Colonel Browne were more numerous than the terms of the passports warranted," &c., and the request to be informed in what particular the passports are held to be irregular, the Tsung-li Yamên have to observe that, as the passports have been given and issued, it is a manifest duty that the holders should be afforded protection and guarded against harm. Thus the documents are, in the language used by the British Minister himself, valid and in order. Whenever at any future date British officers holding these passports shall undertake the journey from Yünnan to Burmah, orders shall certainly be given to the authorities on the spot to afford them active protection, enabling them to pass out of [Chinese] territory in peace and safety. As regards officers holding passports desiring to proceed from Burmah to Yünnan, it will be necessary that, before they commence their journey, they should give notice to the frontier authorities of Yünnan, particularising the time at which they intend to set out, the date at which they expect to arrive at a given point, and the number of attendants they have with them. This will be required to enable the Yünnan authorities to afford them protection on their passage across the border. The British Minister is requested to give due notice to this effect to the Government of India, and the Yamên will, for its part, write in positive terms to the Government of Yünnan, desiring that an escort be provided at the proper time, in order to ensure safe and satisfactory results.



The British Minister observes, in addition, that Her Majesty's Government will have difficulty in believing that, up to the end of June, the Government of Yünnan had made no report of what had taken place on the frontier. In reply, it has to be stated that no report has been made as yet by the Provincial Government as to the cause of the attack on Colonel Browne's Mission. On receipt of the British Minister's statement of the circumstances of this case, as reported to himself, and of the Memorial which will be laid before the Throne by the Governor-General Li, setting forth the facts elicited by his inquiry, a further communication will be made.

The present reply is now forwarded for the information of the British Minister.  
Kwang Sü, 1st year, 7th moon, 22nd day.

No. 43.

*Mr. Wade to the Earl of Derby.—(Received November 8.)*

(Extract.)

*En route to Peking, September 9, 1875.*

IN continuation of my despatch of this date, I have the honour to state that I had made arrangements to leave Tien-tsin for Peking on the 30th August, and had in consequence sent in the forenoon of that day to inform their Excellencies Li and Ting that I should call on them towards evening. Both mandarins urged me to stay some days longer; and on my inquiring the reason of this change in their counsels, they produced copy of a decree instructing them to confer with me on "the Margary affair," as I was "here at hand," with a view to satisfactory adjustment.

I made some remarks, as before, upon my inability to regard as responsible any department but the Tsung-li Yamên in the administration of Foreign Affairs, but declared my readiness at all times to converse on affairs with officers of the known capacity of their Excellencies.

Hereupon we had a long conversation, the most interesting item of which was the Grand Secretary's assurance that an envoy had been appointed to proceed to England.

Nothing fell from me that the Grand Secretary had not heard from me before, and I might say the same on the other side, but for the strong asseveration that Kuo Sung-t'ao, the newly-named envoy, had been chosen for his known pro-foreign tendencies. His Excellency Li also stated that, though he had not got a copy of the decree, a decree had to his knowledge been issued, sharply censuring Ts'ên, the Acting Governor-General in Yünnan, for his dilatoriness in reporting progress and the imperfectness of his Report.

Mr. Grosvenor, whom I had sent over to Chefoo to meet Admiral Ryder, had returned in Her Majesty's ship "Kestrel," and as the "Dwarf" was to be relieved, and would immediately proceed to Chefoo, I resolved to pay the Admiral a visit. The Grand Secretary had hinted that a few days must elapse before he could hear further from Peking.

I called on him as I had promised next morning, the 30th August, at eight, and we went over much old ground with little addition. The same evening I sailed in the "Dwarf" for Chefoo.

I inclose copy of my note to the Prince of Kung, touching the Decree giving powers to their Excellencies Li and Ting, and translation of his Imperial Highness' reply, which I found on my return from Chefoo on the 2nd instant.

Mr. Grosvenor was instructed to wait upon the Grand Secretary the day after my departure to impress upon his Excellency that if an Envoy were sent to England, it would be essential that he should be the bearer of a letter expressive of the regret of the Chinese Government at what had happened in Yünnan; otherwise it would be doubtful whether his mission would be viewed with favour.

Inclosure 1 in No. 43.

*Mr. Wade to the Prince of Kung.*

Sir,

*Tien-tsin, August 30, 1875.*

HAVING made arrangements for my return to Peking, I went last evening to take leave of the Grand Secretary Li and his colleague, the Assistant-Commissioner Ting. Their Excellencies placed in my hands copy of an Imperial Decree, directing them to confer with me, as I was within easy distance, regarding the case of Mr. Margary, with a view to its satisfactory settlement.

I repeated to their Excellencies what I have before taken occasion to state to them, that, without the smallest intention to act otherwise than respectfully towards them, I am compelled, whether in conference or correspondence, to look to the Tsungli Yamèn as the Department invested by the Emperor of China with the charge of administering Foreign Affairs; that the affair to which the Decree refers as the murder of Mr. Margary, fearful atrocity as it was, is not, as between the Governments of England and China, so grave a cause of quarrel as the attack by Chinese troops upon a party of British officials provided with passports, of which, in reality, the murder is but an incident; lastly, that this attack, although the punishment of those who directed it is an indispensable condition, is not, taken *per se*, so grave a matter as the vicious system of foreign policy for many years adhered to by the Chinese Government, of which the present misunderstanding is but one of the natural consequences. Any adjustment of what is termed the Margary case, therefore, to be satisfactory, I have argued, must include a readjustment of foreign relations on the base already indicated to the Tsungli Yamèn in March last, and again to the Grand Secretary Li himself in my Memorandum of the 11th instant.

I explained to the Grand Secretary Li and his colleague, that as the Decree referred to affected a foreign question, I could not doubt, I said, that it would be communicated to me by your Imperial Highness, and, I added, that I could certainly have no objection to discuss, preliminarily, the questions requiring solution with Ministers of the ability of their Excellencies Li and Ting. I have, in effect, had a conference with their Excellencies this morning, a report of which, I presume, will be submitted to your Imperial Highness.

Mr. Grosvenor having come back last night from Chefoo, to which port he had gone to meet Admiral Ryder, who is just arrived there, I decided that I would myself go across to pay his Excellency a visit. I shall be absent but a few days, and, on my return to Tien-tsin, I shall have the honour of again addressing your Imperial Highness.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

Inclosure 2 in No. 43.

*The Prince of Kung to Mr. Wade.*

(Translation.)

*Peking, September 2, 1875.*

THE Prince has to inform Her Majesty's Minister that, on the 28th ultimo, an Imperial Decree was received to the following effect:—

“Let Li Hung-chang and Ting Jih-ch'ang negotiate respecting the Margary affair with the British Minister, Mr. Wade, at Tien-tsin, as he is on the spot, with a view to satisfactory results.”

The foregoing copy, reverently made, is communicated for the information of the British Minister.

No. 44.

*Mr. Wade to the Earl of Derby.—(Received November 8.)*

(Extract.)

*En route to Peking, September 9, 1875.*

I HAVE the honour to inclose copies or translations of various notes that have passed between the Prince of Kung and myself with reference to the Yunnan question since the 27th August.

On that date the Prince wrote to inform me of the departure of the Governor-General, Li Han-ch'ang, for Yunnan. I had already heard of this from Mr. Alabaster.

On the 29th August, His Imperial Highness communicated to me the Decree to which I have earlier referred as censuring the Acting Governor-General Ts'ên Yü-ying. Appended to the note in which the Decree is embodied is the Memorial of the Yamèn, based upon my notes of the 20th and 21st August. I am trying to get these papers (the Decree and the Memorial) both published in the “Gazette.”

On the 3rd September the Prince acknowledged receipt of my despatches of the 20th and 21st August; the first being a narrative of what happened on the Yunnan frontier in February, the second a commentary on the first.

I inclose copy of my reply, in which, for the present, I limit myself to a request that I may be supplied with copies of the papers forwarded to the Government of Yunnan.



regarding Mr. Margary's mission. They would commit the Central Government to a disavowal of the Acting Governor-General's conduct, which might be useful.

Inclosure 1 in No. 44.

*The Prince of Kung to Mr. Wade.*

(Translation.)

Peking, August 27, 1875.

WITH reference to the Imperial Decree, dated the 19th of June last, directing Li Han-ch'ang to proceed with despatch to Yünnan to institute an inquiry, which the Prince has already communicated to the British Minister, he has to state that on the 24th instant a Memorial was received from the Governor-General of Hu Kwang, reporting that he had fixed the 18th instant as the date of his departure for Yünnan. This is accordingly communicated for the information of the British Minister.

Kwang Sü, 1st year, 7th moon, 27th day.

Inclosure 2 in No. 44.

*The Prince of Kung to Mr. Wade.*

(Translation.)

Peking, August 29, 1875.

THE Yamên of Foreign Affairs having addressed a Memorial to the Throne on the 28th instant, requesting that injunctions be issued, calling upon Li Han-ch'ang to expedite his movements, and to proceed with all despatch to Yünnan to investigate the Margary case, the following Decree was issued on the same day:—

"We have perused and fully acquainted ourselves with the contents of the 'Tsunqli Yamên's Memorial, requesting that Li Han-ch'ang be commanded to hasten forward to Yünnan to institute his inquiry. The circumstances attending the murder of the British official Interpreter Margary, which took place in the first moon of this year, are grave in the extreme; and it was the duty of Ts'ên Yü-ying, in his capacity as head of the Provincial Government, to make a prompt investigation into the minutest details of the occurrence, in fulfilment of the demands of justice. That, on the contrary, six months should have elapsed without his having proved able to make effectual inquiry, and to report the result to the Throne, is assuredly a serious dereliction of duty.\* As regards Li Han-ch'ang, he has not set out on his journey until the 18th of this month. Let him hasten forward to Yünnan with all despatch, and institute a searching and thorough inquiry into the actual circumstances of this case. Let him at the same time investigate minutely the obstruction of [the mission of Colonel] Browne. He is to report forthwith, for our information, the truth he elicits, and he is at the same time to devise the measures needful to be taken, in a satisfactory manner and without delay. If Li-Han-ch'ang, and the others concerned, indulge in any further dilatoriness, or allow their conduct to partake in the slightest degree of an attempt at evasion [let it be asked] whether they are capable of facing the consequences of so grave an offence."

The foregoing having been reverently received, is communicated, together with a copy of the original Memorial, for the information of the British Minister.

Kwang-Sü, 1st year, 7th moon, 29th day.

Inclosure 3 in No. 44.

*Memorial from the Tsung-li Yamên with reference to the Yünnan Affair, August 28, 1875.*

THE 'Tsunqli Yamên memorializes, requesting, with reference to the murder of Ma-kia-li (Mr. Margary), on the Yünnan frontier, that commands be laid upon the Governor-General of Hu-Kwang, Li Han-ch'ang, to proceed with all despatch to Yünnan, and fulfil his mission of inquiry.

Your servants have already laid a Memorial before the Throne, setting forth the particulars they had in their possession concerning the murder of Ma-kia-li, which took place on the Yünnan frontier in the first moon of this year, in reply to which a Decree was received to the following effect:—

\* Literally, non-fulfilment, or lack of completion, of the *corpus rerum*, the matter in hand. This phrase is commonly used to convey censure for an aggravated shortcoming in official matters.

"The Yamên of Foreign Affairs memorializes, stating that a British Consular Interpreter has been murdered in Yünnan, and requesting that injunctions be issued for inquiry and action. The memorial states in the course of the first moon of the present year (February, 1875) the British interpreter, Margary, and his party were proceeding from Burma into Yünnan, when, at a town 50 li (17 miles) south-west from the seat of Government of Shan principality of Sanda, subject to the prefecture of Yung-ch'ang, they were attacked by troops in the service of Government, and (Mr. Margary) was murdered. Let Ts'ên Yü-ying institute effective inquiry and action in this case. We likewise ordain that Lui Yo-chao do with all promptitude betake himself to his post and co-operate with the Government in selecting officials of intelligence and ability to deal with the matter as justice requires. Let there be not the slightest approach to trifling (or ambiguity) in the matter."

Subsequently to the foregoing, there was further received on the 16th of the 5th moon (June 19) a decree, commanding Li Han-ch'ang to proceed to Yünnan to carry out an inquiry; and copies of the mandates received have been reverently forwarded by the Yamên to Li Han-ch'ang and to the Governor-General and Governor of Yünnan for their information and guidance.

It should be observed that in all cases of the taking of life occurring in China, it is a bounden duty that the murderer be discovered, that accurate and veracious depositions and testimony be taken, and that sentence be pronounced within the proper limit of time. Still more requisite is it that in cases connected with foreign relations prompt and efficient action should be taken. Moreover, peace and friendship having subsisted for many years between the two countries, and the circumstances of the murder which took place at the beginning of this year being of so very grave a nature, it is an obvious duty that the most minute particulars of this case should be authentically elicited by inquiry, in fulfilment of the demands of justice. Although Ts'ên Yü-ying has memorialised reporting that the witnesses whom it is necessary to examine in reference to this case have already been brought up from T'êng-yüeh to the provincial capital, to await the trial (*lit.*, confronting or examination in presence of other parties or witnesses), yet that six months should have elapsed without his having accurately established by inquiry the real facts of the case and reported them to the Throne is assuredly a serious dereliction of duty. As regards Li Han-ch'ang, he has but just reported his intention to set out on the 18th of this month from the provincial capital of Hupeh on his way to Yünnan; and (the Yamên) feel bound to request a rescript commanding him to proceed with all despatch to the Province, to co-operate with the Governor-General and the Governor in investigating and dealing with the actual circumstances of this case severally (as they may be found to exist), and to lay an accurate report of the same before the Throne, forbidding at the same time any further indulgence in dilatory conduct.

This memorial, entreating that a decree be issued enjoining speedy action for accurate inquiry and satisfactory action with reference to the murder of Ma-kia-li, it is the duty of the Yamên to submit with reverence for the sacred glance of their Majesties the Empresses and of His Majesty the Emperor.

#### Inclosure 4 in No. 44.

*The Prince of Kung to Mr. Wade.*

(Translation.)

*Peking, September 3, 1875.*

THE Prince has to acknowledge the receipt, on the 26th ultimo, of the British Minister's despatch of August 20, setting forth the particulars connected with the murder of Mr. Margary in Yünnan, as ascertained by him, which was delivered to the Tsung-li Yamên, with explanations by the Chinese Secretary, Mr. Mayers, and on the 28th ultimo of a further despatch, dated the 21st August, commenting upon the various propositions which have been made on either side in respect of this case, and stating [in conclusion] that the action to be decided on by the Prince would be the guide of such further steps as the British Minister may find it necessary to take.

In reply, the Prince has to state that the two despatches now under acknowledgment have been submitted to the Throne, and at the same time communicated to the Governor-General Li [the High Commissioner now on his way to Yünnan], with instructions to make accurate and full examination of the particulars and evidence relating to the case, and to lay the facts elicited before the Throne. With reference to the remark further contained in the British Minister's despatch, to the effect that the Chinese Government must look beyond the case in question to an improvement in its foreign relations, the



Prince would observe that, as regards the steps necessary to be taken in connection with the case itself, such as the provision of escorts for the protection of Mr. Grosvenor in Yünnan, and also of a future expedition from India to Yünnan, a declaration has already been distinctly given in the reply sent on the 23rd August to the British Minister's Memorandum, stating the manner in which protection will be afforded. Furthermore, with reference to the two propositions for the nomination of an Envoy to England to cement (or re-establish) friendly relations, and the censuring of the Governor of Yünnan Imperial Decrees have already been received, copies of which, reverently made, have been communicated for the information of the British Minister. The two points additional to the treatment of the present case, as specified by the British Minister, namely, intercourse between the foreign Representatives at Peking and the high officers of the Chinese Government and full compliance with the Treaty stipulations in respect of commercial matters, must be discussed in personal conference with the British Minister and satisfactorily arranged, as has already been distinctly stated in the Memorandum delivered to him in reply.

As regards the measures which it is necessary to take, either in connection with the particular case now pending or with matters additional to this case, the Prince is in no respect unwilling to join the British Minister in consultation, with a view to satisfactory results, and in arranging the action which should be taken, in order to the consolidation of the friendly relations subsisting between the two countries. A Memorandum is appended containing replies to the various observations embodied in the British Minister's despatches under acknowledgment, of which he is requested to take note.

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Inclosure 5 in No. 44.

*Memorandum in reply to Observations in despatches of August 20 and 21, 1875.*

1. *Observation.*—That confidence in the good faith of the Chinese Government must be impaired by the report presented by the two officials Yang and Ch'ên; and that the Prince must have intended their report to be believed or he would not have communicated it.

*Reply.*—The Yamên wrote on the 31st July to the British Minister informing him of the Memorial lately received from the Governor of Yünnan, to state that the two officials, Yang and Ch'ên, had reported the attack [on Colonel Browne and Mr. Margary] to have arisen from the cupidity of the savages when excited by the prospect of booty; to which it was added that, so soon as the Governor-General Li, on his arrival in Yünnan, should have instituted inquiry, conjointly with the Governor-General and the Governor, and laid the result before the Throne, a further communication would be made on the subject. As the Governor of Yünnan had memorialized, transmitting the report made by the two officials in question, and as the British Minister had written to inquire, it was a manifest duty to acquaint him with the particulars reported; but the Yamên was not in a position to judge as to the veracity of the report presented. It was stated, indeed, in the despatch that the Governor-General Li would make inquiry on his arrival in Yünnan, and report further to the Throne. It is plain, therefore, that the Yamên neither asserted the report to be true, nor wished the British Minister to accept it in that light. Had the statements forwarded by the two officials, Yang and Ch'ên, been actually considered to represent the truth, what need, it may be asked, would there have been for His Majesty to appoint the Governor-General Li to undertake a commission of inquiry; and why should it have been stated that his Excellency would investigate and report on the circumstances after reaching Yünnan? If the British Minister will apply this reasoning to the case, it will doubtless suffice to set his mind at rest.

2. *Observation.*—Respecting appointment of Imperial Commissioner, at first declared impossible, &c.

*Reply.*—When the Yünnan affair first became known, there being officers of the high rank of Governor-General and Governor in the province, it was obviously the proper course to call upon those officers to institute inquiry and action. It would have been precipitate to apply for an Imperial Commission of Inquiry. When, however, the report received from the Provincial Government was found to amount to no more than what was stated by the two officials, Yang and Ch'ên, the mandate of the Sovereign appointing the Governor-General Li to the mission of inquiry was forthwith issued. Although three months had meanwhile elapsed, yet, if the distance between Peking and Yünnan and the length of time required for the passage of correspondence to and fro be considered, the action taken can scarcely be called dilatory.

3. *Observation.*—That the Governor-General Li professed ignorance of the attack on Colonel Browne, and doubted the validity of the passports issued, &c.

*Reply.*—The Governor-General Li having been appointed by Decree to proceed forthwith to Yünnan and undertake an inquiry, it follows that every particular requiring to be inquired into and dealt with in connection with the case referred to is embraced within the scope [of the inquiry]. The Governor-General Li, not being informed, on the receipt of the Imperial Decree, of all the details with reference to the case, it was the duty of the Yamên to forward to him copies of all the correspondence that had taken place in the matter; and it is possible that, at the time of Mr. Grosvenor's visit, his Excellency had not yet received the Yamên's communication. As far as the passports are concerned, they were drawn up and stamped in a manner seldom seen in the provinces. The Yamên have now communicated to the Governor-General Li the Imperial Decree issued in reply to their Memorial of the 28th ultimo, requesting that he be directed to hasten forward with all despatch to Yünnan, and there can be no doubt that he will take action in full obedience to the commands issued. If the British Minister will compare the reply above given with that tendered in the preceding paragraph, and bring them to the notice of his Government, there can be little doubt that any suspicions entertained will be dispelled.

4. *Observation.*—That what has to be ascertained is whether the act of war committed in Yünnan was due to carelessness in the instructions issued by the Yamên, &c.

*Reply.*—Since the issue of a passport last summer to Mr. Margary, for his journey to Yünnan, the Yamên have communicated every Decree issued to them, all despatches and notes received from the British Minister, and all memorials, despatches, and notes, emanating from the Yamên themselves, without the slightest exception, to the Governor-General and Governor of Yünnan. No want of care can in any degree be attributed [to the Yamên].

5. *Observation.*—Respecting telegrams to England on the receipt of Mr. Grosvenor's account of his visit to the Governor-General Li, and the consequent detention of Mr. Grosvenor.

*Reply.*—On receipt of the British Minister's despatch in March last, stating that no proceedings could be looked upon as satisfactory unless a foreign official should be present at the trial about to be held, the Yamên put their seal on the passport [issued for this purpose], and sent it to the British Minister. They at the same time appointed Sung Pao-hwa as the official to act as escort [to the British Delegate]. The Governor-General Li having now reported that he was about to set out on his journey on the 18th August, as was notified to the British Minister by the Yamên on the 27th ultimo, the officers appointed to proceed to Yünnan, to be present at the trial, should also set out immediately, in order that the case may be brought to a speedy conclusion.

6. *Observation.*—That at such a crisis as the present the Chinese Government must publicly display an earnest intention to improve its foreign relations.

*Reply.*—The Chinese Government has been now for many years in friendly relations with the Government of Great Britain, and the present affair having come to pass in Yünnan, there is undoubtedly reason that it should publicly manifest its desire for peace and amity, in fulfilment of the duties of friendly relations. The Vice-President Kwoh Sung-tao and his colleague having now been imperially commissioned as Envoys Extraordinary to proceed on a mission to England, it may be hoped that the relations between the two countries will, for the future, be strengthened in their friendly character.

Inclosure 6 in No. 44.

*Mr. Wade to the Prince of Kung.*

Sir,

*Tien-tsin, September 7, 1875.*

I HAVE the honour to acknowledge the receipt of your Imperial Highness's communication of the 3rd instant.

There is much in it that will need some further discussion; but I purpose deferring this until my return to Peking.

I shall for the present confine myself to observing that as, according to the Memorandum appended to the despatch under acknowledgment, every paper relating to Mr. Margary's mission was forwarded to the Acting Governor-General of Yünnan, the neglect of duty both before and after the attack upon Colonel Browne's mission, with



which I have held myself justified in charging that high officer, seems to be sufficiently established.

I beg to add that the communication to me of the Imperial Decrees referred to by your Imperial Highness as having been transmitted by the Tsungli Yamên to the Acting Governor-General Ts'ên will, I cannot doubt, be viewed with satisfaction by Her Majesty's Government; and I have therefore to request that I may be supplied with copies of these documents.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

No. 45.

*Mr. Wade to the Earl of Derby.—(Received November 8.)*

(Extract.)

*En route to Peking, September 10, 1875.*

I HAVE the honour to inclose copies of correspondence regarding the appointment of a Mission to England referred to in my despatches of yesterday.

In my reply, for the reasons I have elsewhere given, while I thank the Prince for the communication of this Decree, I request that nothing more be done in respect of this Mission until my return to Peking.

Inclosure 1 in No. 45.

*The Prince of Kung to Mr. Wade.*

(Translation.)

*Peking, August 29, 1875.*

THE Prince has to forward the following copy, reverently made, of an Imperial Decree received on the 28th instant:—

“Let the expectant Vice-President, Kwoh Sung-tao, and Hū K'ien-shên, an expectant Taotai on the staff of the Province of Chihli, fill\* the posts of Envoys Extraordinary (*lit.* Imperial Commissioners) on a Mission to England. We confer, at the same time, upon Hū K'ien-shên the official button of the second rank.†

The foregoing, reverently received, is communicated for the information of the British Minister.

Kwang Sü, 1st year, 7th moon, 29th day.

Inclosure 2 in No. 45.

*The Prince of Kung to Mr. Wade.*

(Translation.)

*Peking, August 29, 1875.*

THE Prince has to forward the following copy, reverently made, of an Imperial Decree received on the 28th inst.:—

“Let the expectant Vice-President Kwoh-Sung-tao, and Hū-Kien-shên, an expectant Taoutae on the staff of the Province of Chihli, fill‡ the posts of Envoys Extrordinary (*lit.* Imperial Commissioners) on a mission to England. We confer at the same time upon Hū-K'ien-shên the official button of the second rank.”§

The foregoing, reverently received, is communicated for the information of the British Minister.

Kuang-Sü, 1st year, 7th month, 29th day.

(Signed)

W. F. MAYERS, *Chinese Secretary.*

\* The expression translated “fill” is one which is not customarily employed in Decrees of appointment, and never with reference to high or distinguished officers.

† As an officer of the rank of Taoutae, the button he wears is that of the 4th rank (first class).

‡ The expression translated “fill” is one which is not customarily employed in decrees of appointment, and never with reference to high or distinguished officers.

§ As an officer of the rank of Taoutae, the button he wears is that of the 4th rank (1st class).

## Inclosure 3 in No. 45.

*Mr. Wade to the Prince of Kung.*

Sir,

*Tien-tsin, September 4, 1875.*

ON my return from Chefoo yesterday evening, I had the honour to receive your Imperial Highness's despatch of the 29th August, inclosing copy of a Decree reverently made, in which the expectant Vice-President, Kuo Sang-tao, and Hsü Ch'en-shên, an expectant Taoutae on the staff of the Province of Chihli, are commanded by the Emperor to proceed as His Majesty's Envoys to England.

I beg to thank your Imperial Highness for the communication of His Majesty's pleasure on this subject. I venture at the same time to request that no further action be taken in the matter before my return to Peking. I hope to be in Peking next week.

I renew, &amp;c.

(Signed) THOMAS FRANCIS WADE.

## No. 46.

*The Earl of Derby to Mr. Wade.*

Sir,

*Foreign Office, November 24, 1875.*

I HAVE received, and laid before the Queen, your despatches of the 9th and 10th of September, respecting the further progress of negotiations with the Yamên in regard to the Yünnan affair; and I have to state to you that I approve your proceedings as reported in these despatches.

I am, &amp;c.

(Signed) DERBY.

## No. 47.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, November 25, 1875.*

I HAVE much satisfaction in acquainting you that the Queen has been graciously pleased to appoint you a Knight Commander of the Most Honourable Order of the Bath, in consideration of your diplomatic services in general, and especially for the energy and resource shown by you during the difficulties with the Chinese Government arising out of the Yünnan outrage.

I am, &amp;c.

(Signed) DERBY.

## No. 48.

*Consul Medhurst to the Earl of Derby.—(Received December 9.)*

(Telegraphic.)

*Shanghai, December 7, 1875, 4.10 P.M.*

LETTERS from Mr. Grosvenor of 24th November. All well.

## No. 49.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

(Extract.)

*Shanghai, October 20, 1875.*

I HAVE the honour to inclose translation of a Decree issued on the 7th September, directing the Grand Secretary, Li Hung-chang, to charge himself with the formation of the mission to England, to the chief posts in which their Excellencies Kuo Sung-tao and Hsü Chien-shên had been earlier appointed by Decree. This had not been published. The letter, that of the 7th September, was published, and, as I believe, at the instance of the Grand Secretary Li, upon whom I had impressed the importance of the publication.

As I have before stated, I made it, at the same time, a condition that, in any Decree



published, no mention should be made of Her Majesty's Government or Her Representatives in a form to which objections might be taken.

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Inclosure in No. 49.

*Decree published in the "Peking Gazette" of September 7, 1875.*

(Translation.)

LET the expectant Vice-President Kuo Sung-tao and the expectant Taotai Hsü K'ien-shên, of the staff of the Province of Chih Li, invested with the button of the second rank, having been appointed as Envoys Extraordinary on a mission to England, confer as may be needful with Li Hung-chang respecting the selection and appointment of the staff of officials and Chinese interpreters whom they shall take as their suite.

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No. 50.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

My Lord,

*Shanghai, October 20, 1875.*

IN my despatch of the 9th September, I adverted to the appointment of their Excellencies the Grand Secretary Li and his colleague Ting, by Decree, to act as negotiators with me in the matter of the Yünnan outrage, as an incident which I had thought it my duty to request the Prince of Kung to explain. I have the honour to inclose translation of the Prince's reply.

I have, &c.

(Signed)

THOMAS FRANCIS WADE.

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Inclosure in No. 50.

*The Prince of Kung to Mr. Wade.*

(Translation.)

*September 8, 1875.*

ON the 4th instant the Prince received the British Minister's despatch, stating that their Excellencies Li and Ting had placed in his hands [copy of] an Imperial Decree directing "Li hung-chang and Ting Jih ch'ang to confer with Mr. Wade, the British Minister Resident in Peking, at Tien-tsin, he being within easy distance, regarding the case of Mr. Margary, with a view to its satisfactory settlement;" and that he had repeated to their Excellencies what he had before taken occasion to state to them.

The Prince would observe, in reply, that the object with which the Tsung-li Yamên was established was precisely for the conduct of the foreign relations of the Chinese Government, and the control of all affairs of this nature is naturally vested in the Yamên. Inasmuch, however, as in the case of Mr. Margary, a Decree has now been received directing their Excellencies Li and Ting to confer with Her Majesty's Minister, he being within easy distance, it will of course be in their power to take decision in certain particulars; whilst on such points as necessitate consultation with the Yamên, they will undoubtedly write to obtain the Yamên's opinion, with a view to their satisfactory settlement.

Their Excellencies Li and Ting have already communicated to the Yamên the various matters upon which the British Minister has spoken with them. He can without hesitation confer and take action with their Excellencies Li and Ting.

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No. 51.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

(Extract.)

*Shanghai, October 20, 1875.*

I MENTIONED that I had recommended the Prince of Kung to be in no hurry about despatching the mission. I am not sure that my despatch to the Prince has been sent to your Lordship. Should it not have been, the omission shall be immediately supplied. Meanwhile, I have the honour to forward translation of His Imperial Highness' reply.

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## Inclosure in No. 51.

*The Prince of Kung to Mr. Wade.*

(Translation.)

September 8, 1875.

ON the 5th instant the Prince received the British Minister's despatch, stating that on his return to Tien-tsin from Chefoo he had received His Highness' despatch of the 29th August, from which he learned, with deference, that His Highness was in receipt of an Imperial Decree, and tendering his thanks for the communication of His Imperial Majesty's pleasure on this subject. The British Minister ventured, however, at the same time to request that, as he proposed returning to Peking in a few days, any further action in the matter might be stayed for a short while.

The Prince has to observe that, in the case of Foreign Missions, the Envoys, after receipt of the Imperial Decree [conferring their appointment upon them], have to look to the selection of their suite, the preparation of their baggage, and various other necessary arrangements, which ten or twenty days will not suffice to complete. It is the duty, however, of Envoys who have been selected by His Majesty and entrusted with his commands, when their preparations are duly completed, to at once set forth in obedience to these commands, and they should not, without [good] cause, delay their departure for any length of time.

## No. 52.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

(Extract.)

Shanghai, October 20, 1875.

HAVING left Tien-tsin, as I have earlier reported, on the 8th September, I reached Peking upon the 12th. Mr. Mayers, the Chinese Secretary, had left me *en route* on the 10th, and arriving in Peking the same day, in accordance with my instructions, waited immediately on the Ministers of the Yamén.

Upon the 14th the Ministers Tung Hsün, Ch'unghow, and Ch'ênglin, came to pay me a visit, but not to speak of business. They would repeat any observations I might make to the Prince of Kung, but were unprovided with an answer to any one of the questions which had been left unsolved at Tien-tsin. A brief Memorandum of what passed is inclosed.

## Inclosure in No. 52.

*Memorandum of Visit from the Ministers of the Yamén.*

September 14, 1875.

THE Ministers Tung, Ch'unghow, and Ch'ênglin, called to pay a complimentary visit to Mr. Wade on his return to Peking.

The Ministers had nothing to say with regard to any action on the points prescribed by Mr. Wade as indispensable in connection with the provisional settlement of the present case, and Mr. Wade expressed himself with some warmth upon this absence of any token of active attention to the subject, and signified to the Ministers the intention he had formed of leaving Peking on the 28th instant for Shanghai, to report under any circumstances to Her Majesty's Government by telegraph, either that matters have been satisfactorily arranged, or the reverse. In the latter case, he should remove the entire Legation to Shanghai, in order to leave the possible action of Her Majesty's Government unfettered. The Ministers could only reply that they would report to the Prince. It was arranged that Mr. Mayers should call upon the Ministers on the day after to-morrow.

## No. 53.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

(Extract.)

Shanghai, October 20, 1875.

THE Prince arrived alone at the time appointed on the 21st, but was presently followed by the Grand Secretary Paoyün, the Assistant Grand Secretary Shên Kuei-fên, and the Ministers Tung Hsün, Ch'unghow, and Hsia.



The Prince of Kung was, as always, most courteous, but he, on the arrival of two of the Yamên Clerks of Departments, took his leave, as he said, to avoid discussion. The Ministers remained, and without farther parley, produced a Memorandum in eight Articles, purporting to set forth the concessions that had been made by the Chinese Government. A copy of this paper was more formally communicated to me in a despatch the following day.

I myself called at the Yamên later in the afternoon, and again repeated that, unless some understanding were come to about the Ministerial question, I should not regard the guarantees I wanted complete, even if greater progress were made toward the solution of my commercial difficulty.

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Inclosure in No. 53.

*The Prince of Kung to Mr. Wade.*

(Translation.)

*Peking, September 22, 1875.*

THE Prince received on the 8th instant the British Minister's despatch of the 17th, in which he states, with reference to the subject of the Yünnan outrage, and the larger question of which it forms a part, he feels compelled to report to his Government that he sees not the slightest manifestation of an intention to put forth a *bond fide* effort, and that he shall at once remove the Legation from Peking.

In reply to this communication, the Prince has to state that, with reference to the affair that has taken place in Yünnan, the Yamên of Foreign Affairs has repeatedly memorialized the Throne, and has received Decrees in reply, enjoining active proceedings upon the high authorities of that province. A Decree has further been received nominating the Governor-General Li as High Commissioner to conduct an inquiry. Again, in the course of last month, the Yamên solicited a Decree commanding the Governor-General Li to hasten with all despatch to Yünnan, in reply to which a Decree was received laying stringent commands upon the Governor-General and the other high functionaries concerned to take the steps that are requisite with all due promptitude. The Chinese Government can conscientiously affirm its belief that it has omitted no effort in its proceedings in this case.

With reference to the other questions to which the British Minister refers, as regards the provision of escorts for Mr. Grosvenor on his arrival in Yünnan, and for a future mission from the Government of India, an engagement to this effect has already been specified in the Memorandum of replies to the British Minister, dated the 22nd August. Again, as regards the fulfilment of the commercial stipulations of the Treaty at the ports and in the interior, the Ministers have agreed that, in conformity with the Treaty, the question shall be examined with a view to the removal of causes of complaint. The Ministers have also in personal conference agreed, with reference to the appointment of officers by the two Governments for the purpose of consultation with reference to the regulations for the frontier trade in Yünnan, that so soon as the case now engaging attention (*lit.* the actual or foremost case) shall have been wound up, this matter shall be entered upon (*lit.* made a subject of consultation and action). With regard to the proposal that an envoy should be sent to Great Britain, and should pass through India on his way [this has been carried into effect], with the exception of the visit *en route* to India, as has been stated in the Memorandum previously handed in, the Decree of the 28th August appointing envoys having been communicated to the British Minister in the Prince's despatch of the following day. In connection with the proposal that the Decree appointing the envoy should be published, a Decree issued for the information of the Ministers and subjects of China appeared on the 7th of this month. The proposal that a Decree be issued censuring the Governor of Yünnan was met by the Rescript issued on the 28th August, which was communicated to the British Minister. Steps have likewise been taken for mature deliberation with reference to the proposal concerning intercourse with the heads of the different departments of State, as is set forth in the Memorandum appended to this despatch.

Thus, in connection with the Yünnan affair itself, and the other questions of which it forms a part, as referred to by the British Minister, the Tsung-li Yamên has not in the most infinitesimal degree failed to act with *bond fide* effort; neither is it the case, as the British Minister has stated in his despatch, that almost every one of his proposals has been declared impracticable.

Coming to the British Minister's remark that he has not attached so much importance to the rejection of his proposals (as to the tone in which they have been discussed),

the Prince would reply that, whatever be the importance attaching, in the eyes of the British Minister, to this point, in all the discussions that have been carried on by their Excellencies Li and Ting, or the Ministers of the Yamên, with the British Minister or with the Chinese Secretary, Mr. Mayers, the propositions to which assent has not been given have been extremely few. How, then, can it be that no satisfactory guarantees have yet been furnished, or that the misgivings entertained by the British Minister are not dispelled?

The Governor-General Li having set out already some time ago from Hupeh, it must be for the British Minister to decide when Mr. Grosvenor shall proceed on his journey. If, on the arrival of the Governor-General Li in Yünnan to carry out his inquiry into this case, the officers deputed to be present at the trial should not have reached the spot, the Yamên can scarcely lay the blame of wilful delay on the Governor-General or those with whom he is to act.

The removal of the British Legation from Peking (as announced in the British Minister's despatch) it is not for the Prince, as a matter of course, to oppose by any means of constraint. What is necessary, however, in the conduct of affairs between the two countries is, that each shall show consideration for (or, bear with) the other, and that there shall be mutual discussion (on any subject that may arise). In such wise the existence of a genuine desire for friendly relations will be guaranteed. The British Minister observes, however, in his despatch now under acknowledgment, that he "has been chiefly influenced by the tone which the Ministers have displayed throughout the course of the recent discussions." Now, in respect of every one of the propositions advanced by the British Minister, the Tsung-li Yamên has, without exception, negotiated in entire sincerity. The British Minister, nevertheless, not having carefully considered (this fact) addresses his remarks to the "tone" of the Ministers.

It has always been a rule with the Ministers of the Yamên, in all their conferences with the representatives of any foreign Power, although occasions for argument may have arisen, to exhibit the very utmost degree of consideration and of courtesy. They have never given cause to any one to take offence (*lit.* they have never put any one in position "hard to bear"). The affair which has taken place in Yünnan, moreover, is one of the utmost gravity, and the object with which the Sovereign has commissioned the Governor-General Li to undertake an inquiry is, that it should be dealt with as justice requires. The British Minister, on his part, in deputing an officer to be present at the trial, has done so in order that he may have testimony whereupon to rely.

Before the Governor-General Li, however, has reached his destination in Yünnan, and whilst the officer deputed by Mr. Wade to be present at the trial has not been allowed to proceed, the British Minister writes that he has "no expectation of this case being fairly dealt with."

Is it (the Prince would ask) because the British Minister can prophesy (*lit.* knows beforehand) that the Chinese Government is certain not to deal fairly in the matter, that he (is about to) hurry away from Peking? or is he hurrying away from Peking because there has been a minute difference of opinion with regard to the propositions he has advanced, which he represents as almost amounting to their entire rejection as impracticable?

In conclusion, the Ministers of the Yamên are most desirous that the British Minister should negotiate (with them) in a dispassionate spirit. Whether negotiation is to be consented to or not, it remains with the British Minister to decide.

At the return visit which was paid by the Prince yesterday at the British Legation, the entire subject was discussed at length by the Ministers of the Yamên with the British Minister; and the Prince is much gratified to learn that the Chinese Secretary, Mr. Mayers, is further to be sent to-day to an interview at the Yamên.

This reply is now for the present transmitted for the information of the British Minister.

Kwang Sü, 1st year, 8th moon, 23rd day.

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*Memorandum annexed to the foregoing Despatch.—(Copy of Memorandum handed by the Ministers of the Yamên to Mr. Wade on the 21st instant.*

1. Relations between the foreign representatives at Peking and high officers of the Chinese Government.

In a previous Memorandum it has already been stated that on Mr. Wade's return to Peking this subject should be duly considered. The Yamên (convinced on) mature deliberation upon it, that it should be sought to reach the end by spontaneous means,



(considers that) the only course available is to wait until the envoys who are about to be sent abroad shall have had opportunities of familiarizing themselves with the usages of other countries, entering, as they naturally will do, upon intercourse with the high officials of the countries to which they will proceed, upon which, on their return to China, it will similarly be natural for them to cultivate relations with the foreign representatives at the capital of China. Progress will thus be made, increasing step by step, (until) it becomes a matter of no difficulty to render the state of affairs (in China) alike with that prevailing in the rest of the world. This is a natural and spontaneous course of proceeding, which may be depended upon. Should Mr. Wade be able to propose any practicable plan, even more spontaneous in its action than this, it can likewise be taken into due consideration.

2. Observance of the Treaty stipulations relating to trade at the ports and in the interior.

This implies the redress of causes of complaint in connection with the Treaty, respecting which consent has already been signified in the previous Memorandum to join in due consultation.

3 and 4. Escorts to be provided for Mr. Grosvenor and for a future Indian Mission.

Agreement on these two points has already been signified in the reply written on the 22nd August.

5. Memorial and Decree conveying censure upon the Governor of Yünnan.

The Yamên memorialized on the 28th August, and received a Decree in reply, in which the Governor is taken to task. This was communicated for Mr. Wade's information.

6. Appointment of an envoy to Great Britain, who should pass through India on his way.

With the exception of the visit to India, (the objections to which) have been set forth in the previous Memorandum, the appointment of an envoy forms the subject of the Decree of the 28th August, which was communicated on the following day to Mr. Wade, and on the 2nd September to the other foreign Representatives at Peking.

7. Publication of the Decree of Appointment.

In addition to the Decree of Appointment which was notified to Mr. Wade on the 29th August, a further Decree has been published on the 7th September for the information of His Majesty's Ministers and subjects generally.

8. Frontier trade in Yünnan.

It has already been stated on the 16th instant to Mr. Mayers, for the information of Mr. Wade, that so soon as the pending affair has been brought to a conclusion, this matter shall be made subject to arrangement.

#### No. 54.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

(Extract.)

*Shanghai, October 21, 1875*

I INCLOSE a copy of my despatch of the 24th to the Prince of Kung, stating my reasons for sending Mr. Grosvenor to England.

On my return to the Legation, I informed my colleagues—the Representatives of Russia, America, Germany, and France, of my intention to send Mr. Grosvenor to England, and it was my purpose to telegraph this decision to your Lordship, when the receipt of Mr. Mayers' Report, on his return from the Yamên, induced me once more to reopen negotiations.

#### Inclosure in No. 54.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, September 24, 1875.*

I HAVE perused with attention the communication your Imperial Highness did me the honour to address me on the 22nd instant, together with the Memorandum, in eight articles, inclosed in it. A copy of the latter paper had been left with me by the Ministers who accompanied your Imperial Highness to the Legation on the 28th instant.

After your Imperial Highness' departure on that day, I had a long Conference with the Ministers, principally upon the subject of the first and second articles, those relating that is to say, to intercourse between foreign Representatives and high officers of the Chinese Government in this capital, and to removal of burdens now laid upon foreign trade in contravention of Treaty. I referred also to the possibility of the audience question being revived during the minority of the Emperor, and the advisability of some understanding being arrived at on the subject.

It was eventually agreed that Mr. Mayers should proceed to the Yamên on the following day, the 23rd instant, at two o'clock, and that Mr. Hart, the Inspector-General of Customs, should also be invited to attend; but, having reason to apprehend that the Ministers had carried away with them an impression that I considered the commercial question as taking precedence of all beside in importance, I considered it desirable to disabuse their Excellencies of this notion, and Mr. Mayers was accordingly directed to wait on the Ministers in the forenoon, and to submit to them a proposition, which was the least I could consent to regard as an instalment of the Treaty right affecting the position of foreign Representatives.

Mr. Mayers, after discharging this mission, came back to the Legation, and at two o'clock, according to appointment, he returned to the Yamên. Later in the afternoon I had the honour to receive your Imperial Highness' communication under acknowledgment.

This communication is a reply to my despatch of the 17th instant, in which I informed your Imperial Highness of my intention at once to withdraw the Legation from Peking, and the reasons which had influenced me in forming that decision. I do not think it necessary to recapitulate them at length. They might be summed up in the statement that, from the tone in which high Chinese officers, both in the capital and in the provinces, have carried on the discussion in which I have been, directly or indirectly, engaged with them during the last six months, I could place no confidence whatever in the purpose of the Chinese Government to do justice in the matter of the Yunnan outrage, or to revise the conditions of its intercourse, diplomatic or commercial, with foreign nations, in such wise as to guarantee their Governments against insults or their people against wrong.

The conference I had with the Ministers of the Yamên at the Legation on the 21st did much to confirm me in this opinion. It was strengthened by perusal of the Memorandum left with me by their Excellencies, by your Imperial Highness' despatch of the 22nd, and by Mr. Mayers' reports of his first and second visits to the Yamên on the 22nd. So much so, that when he informed me of a further appointment to meet their Excellencies at the Yamên yesterday, I had all but made up my mind to decline continuance of the discussion on any terms. The proposition regarding ministerial intercourse, communicated to their Excellencies in the morning, was, in form at least, new. The trade question was certainly not new, but, although Mr. Hart had been at the Yamên for two hours, the Ministers, in their observations to Mr. Mayers, appeared disposed to deal with it pretty much as if they now heard what was advanced for the first time.

However, on consideration, I decided that it would be more becoming, before I declared the discussion at an end, to hear what answer your Imperial Highness had been pleased to make to the proposal submitted to the Ministers, by my desire, on the 22nd. It had been taken down in writing from Mr. Mayers' dictation. I knew, therefore, that there could be no mistake as to my meaning. I went accordingly to the Yamên yesterday, accompanied by Mr. Grosvenor and Mr. Mayers, and was received by the Grand Secretary Shên, and the ministers Tung and Ch'ung.

The Grand Secretary Shên opened the Conference by what I understood to be a message from your Imperial Highness, to the effect that if a memorial were presented in the sense I had suggested, and an Imperial Decree obtained, directing the chiefs of other departments of State to confer with the Tsung-li Yamên regarding the changes in etiquette, it might be expedient for China to adopt now that missions are about to be established abroad, there would possibly be serious dissension (*nao*) between the high officers so instructed. And of this your Imperial Highness thought it well I should be apprised beforehand.

It appeared to me that this message could have but one meaning. If your Imperial Highness anticipated so strong an opposition to the object to be indicated in the Decree, I was naturally to be prepared for the rejection of the measure on which the high officers in question were to deliberate. Nothing to my mind, and so I stated, could be less satisfactory. I could not suppose that under the circumstances, your Imperial Highness could move the Throne as I had requested. I added, that were the result I presumed inevitable, the rejection of the measure suggested, to follow the issue of the Decree, so



far as foreign feeling was concerned, and it was the propitiation of this that I had contemplated, the last end would be worse than the first.

Both the Grand Secretary and his Excellency Tung continued to assure me that it was not at all certain that the measure would be rejected, even if it were hotly discussed. A similar discussion had ensued, when it was proposed to found the school for languages. Your Imperial Highness had hereby desired that I should not be unaware of the contingency.

I continued to declare myself unable to understand why the contingency of a discussion between Chinese high officers should be made known to me at all, unless as a warning that the measure was more likely to be lost than carried. I was then assured that if the Tsung-li Yamên supported it before the Throne, the measure was certain to be carried.

After much reiteration of all that had passed, as above, on both sides, a note was brought into me open, from the Grand Secretary Wên-siang, by one of the clerks of the Yamên. Your Imperial Highness was of course cognisant of this paper, and I beg attention to the passage in which his Excellency informs me that on the matter of ministerial privileges, the Yamên would certainly not venture, until the Emperor shall have assumed the administration of the Empire in person, to intrude requests on His Majesty.

My resuscitation of this and the other questions noticed in the Ministers' memorandum of the 22nd, was due to my desire to obtain such guarantees of the determination of the Chinese Government to change its foreign policy, as would enable me to report that I thought the Government would act in good faith in the Yünnan affair. These guarantees obtained, I was prepared to send Mr. Grosvenor on his mission to Yünnan. I regret that I can give no such assurance to Her Majesty's Government. If it be indeed true that the prayer of the Tsung-li Yamên is certain to be listened to, and that, the Decree once issued, the end I had in asking for it is certain to be attained, I am at a loss to explain the caution conveyed to me regarding the opposition of Chinese Ministers to it. Still less can I explain the very strong asseveration, above quoted, of the Grand Secretary Wên-siang. As I stated in my despatch of the 17th instant, it was less the rejection of what I propose than the tone and attitude of the ministers with whom my propositions were debated, that convinced me of the inutility of prolonging discussion. I must now tell your Imperial Highness that this conviction is simply strengthened by the conferences of the last few days, and that I have arrived at the following decision:—

I stated in my despatch of the 17th instant that I should withdraw the Legation from Peking. For certain reasons I shall not do this. I shall remain in Peking. But instead of allowing Mr. Grosvenor to proceed to Yünnan, I shall send him to England, to explain the situation in person to the Earl of Derby.

In the matter of Ministerial privileges, it will be for your Imperial Highness to take what steps you may consider most suitable for the satisfaction of the obligations of the Chinese officers to the Governments of other countries.

As regards taxation of trade, I have more than once pointed out that, if the Chinese Government persists in unduly taxing the trade of British merchants, a measure of retaliation is in the hands of the British Minister. And I must entreat your Imperial Highness no longer to regard this as an empty form of words.

I shall inform the Viceroy of India that I cannot recommend the despatch of such a mission as was in contemplation at present.

Lastly, as to the Yünnan outrage, Her Majesty the Queen, in the Speech delivered from the Throne, when Parliament was prorogued on the 13th August, has declared it to be the purpose of her Government to insist upon the punishment of both the instigators and perpetrators of that crime. The Governor-General Li, in his capacity of High Commissioner, having started from Wu Ch'ang-fu more than a month since, will shortly be at the provincial capital of Yünnan. His Excellency will, of course, report the result of his inquiries, and your Imperial Highness, I cannot doubt, will communicate the substance of his report to me, for the information of Her Majesty's Government. On this point I shall take the liberty of referring your Imperial Highness to my despatch of the 20th August, containing a narrative of what occurred on the occasion referred to, compiled from authentic sources, and of reminding your Imperial Highness that, in the face of the facts there put together, it will be difficult to persuade Her Majesty's Government to accept any of the solutions as yet brought forward by Chinese officials. The Grand Secretary Li assured me that the Acting Governor-General Ts'ên, in his Memorial, had represented the assailants of Colonel Browne's party to be train bands. A Memorial from his Excellency Ts'ên, quoted in your Imperial Highness' despatch of

the 31st July, spoke of them as savages of the tribes tempted by hope of plunder. His Excellency Ting ascribed the attack to simple people who knew no better. There are other solutions even more ridiculous. Your Imperial Highness may rest assured that any such explanations as these would but add seriously to the angry feeling the crime itself has produced in England.

To conclude, in my despatch of the 21st August I stated that I did not choose Mr. Grosvenor to take part in the investigation without guarantees of good faith, because I did not choose that my Government should be befooled. I must warn her Majesty's Government that I have even less hope than some time since of a satisfactory termination of this inquiry; that I have, if possible, less confidence than ever in the security of the future; and that, if the dignity of the Government is to be respected in China, and due protection insured to the persons and interests of British subjects, Her Majesty's Government must reckon on other means than Treaties, of which the majority of Chinese officials are ignorant, or which the few acquainted with them never hesitate to ignore. A secret Decree of the 12th November, 1860, a copy of which I append to this despatch, prescribed the course of action to be pursued in the provinces in the regulation of trade. In the preparation of rules affecting it, care was to be taken that a spirit of restriction should abide. It is with sincere regret that I find myself constrained to admit that no other spirit has been manifested, whether in the capital or the provinces, since the day the British Treaty first came into operation.

One word more. I cannot doubt that much that has fallen from me, in speech—in writing, is in matter or in manner distasteful to the Chinese Government. For the manner—for my frequent loss of temper in argument—I put forward no excuse. For the matter, the Chinese Government leaves me, in my judgment, little option. If, however, it appear to your Imperial Highness that I am dealing harsh measure to the Chinese Government, the Mission now about to proceed to England will have an opportunity of duly representing the opinions of the Chinese Government to the Government of Her Majesty. I have no desire to delay its departure.

I avail, &c.

(Signed) THOMAS FRANCIS WADE.

No. 55.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

(Extract.)

*Shanghai, October 21, 1875.*

I INCLOSE copy of an official note which I addressed to the Prince of Kung on the 26th of September.

The same day, the 26th, the Chinese version of my long note of the 24th was transmitted to the Prince, for exactness sake only; the decision conveyed in it had been cancelled by my announcement of an intention to revert to my earlier plan, made on the 25th.

The 27th September, I received an official note from the Prince of Kung acknowledging mine of the 24th, which he had now had an opportunity of reading in Chinese, and informing me that a memorial on the subject of Ministerial intercourse had been or would be (it was not clear which) presented to the Throne. I inclose translation of this note, and copy of my reply to it, which was sent in immediately. I availed myself of the opportunity to state that, much as I regretted the use of peremptory language, I felt bound to insist, without compromise, on the concession of my demands. The Prince's note, it will be seen, had alluded to the Ministerial question only. Nothing was said either of trade in general or of trade on the Yunnan frontier. The Ministers Shên and Tung had promised me on the 25th that Mr. Mayers should be sent for to confer with them on the trade question. No message had come from them on the afternoon of the 27th, and the 28th was the day on which the term I had named was to expire.

Inclosure 1 in No. 55.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, September 26, 1875.*

I HAD the honour to address your Imperial Highness a communication of considerable length upon the 24th instant, in which I explained my reasons for declining further



discussion of the questions that have been subjects of conference or correspondence during the last six weeks. In the same communication I announced my intention of sending Mr. Grosvenor to England. The original of my note was left, by my desire, at the Yamên by Mr. Mayers, who translated it orally to the Grand Secretary Shên and the Minister Tung.

I myself had an interview with their Excellencies yesterday, and I doubt not they will have reported to your Imperial Highness the conditions under which I am prepared to modify the decision arrived at as above, and the course I am resolved to pursue, should satisfaction of these conditions be found impossible.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

The translation of my note of the 24th instant has taken time, but will be sent in the course of to-day.

T. F. W.

Inclosure 2 in No. 55.

*The Prince of Kung to Mr. Wade.*

(Translation.)

September 27, 1875.

THE Prince of Kung writes in acknowledgment of the despatch received from Mr. Wade on the 26th instant, with the contents of which he has fully acquainted himself. On the 24th instant Mr. Mayers delivered at the Yamên the English text of a communication from Mr. Wade, which he orally translated to the Ministers, and on the 24th instant Mr. Wade, attended by Mr. Mayers, had a conversation at the Yamên with the Ministers Shên and Tung, the purport of which the Ministers have not failed to report to the Prince.

With reference to the proposition named as the first essential, the Yamên have already [decided]\* forthwith to draw up a memorial to the Throne. The Prince, in forwarding this preliminary reply, expresses his wishes for Mr. Wade's prosperity.

Inclosure 3 in No. 55.

*Mr. Wade to the Prince of Kung.*

September 27, 1875, 2 P.M.

MR. WADE has the honour to acknowledge the receipt of the Prince of Kung's note of this morning.

Mr. Wade is in some doubt as to the meaning of the last sentence in it. The word "i," as the sign of past time, would seem to indicate that some action had been taken by the Tsung-li Yamên. The words "chi jih," on an early day, preceding the words "ni tsou," propose to address a Memorial to the Throne, imply that action has been contemplated, but has not yet been taken.

Mr. Wade will be obliged to His Imperial Highness to inform him whether he is to understand that the Memorial of the Yamên has been or is about to be presented, and in the latter case how soon it is to be laid before the Throne.

Mr. Wade must also call His Imperial Highness' attention to the fact that the note under acknowledgment contains no reference whatever either to the taxation of trade at the ports, or the trade between Burma and Yünnan.

The Prince of Kung may be assured that it gives Mr. Wade no pleasure to be writing notes of a peremptory character to a personage of His Imperial Highness' exalted position, at whose hands, moreover, Mr. Wade has never experienced any but the most courteous treatment; but Mr. Wade has no alternative.

The Ministers with whom he has been in conference on the subjects above referred to speak of them as if the concession of what Mr. Wade requires were something extravagant to exact of China, and at the same time a matter of extraordinary favour to the British Government. Mr. Wade does not so regard it, neither will it be so regarded by the British Government. It must be remembered that what Mr. Wade has asked for has been asked for not as satisfaction for the atrocity committed in Yünnan; that has to be

\* N.B.—There appears to be a studied ambiguity in this phrase, as regards completed or prospective action.

visited upon its instigators and perpetrators, but as guaranteeing the good faith of the Chinese Government in the conduct of the inquiry about to be held in Yünnan; and as guaranteeing its determination to enter into relations with foreign Governments that shall better secure the future against recurrence of such crimes as the Yünnan atrocity. Without these guarantees, Mr. Wade has declared that he will not send his agents to be present at the inquiry in Yünnan; and unless his agents be present, as he told the Prince of Kung last March, no finding or sentence of a Chinese Tribunal will be deemed satisfactory by Her Majesty's Government.

Mr. Wade has already reported to Her Majesty's Government the substance of his note forwarded to the Prince of Kung upon the 17th instant. He must repeat once more that, if it be not in His Imperial Highness' power to concede to the propositions now before His Imperial Highness by the time appointed, it will be his duty to act as in that note he stated he would act.

The consequences are, no doubt, of the extremest gravity; but, with the record of the last fortnight's conferences before him, Mr. Wade accepts their responsibility. If there be a point on which Mr. Wade has reason to apprehend the disapprobation of Her Majesty's Government, it is that, after the announcement of the decision taken on the 17th instant, he should have modified it as he did modify it on the 24th.

No. 56.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

My Lord,

*Shanghai, October 21, 1875.*

HAVING received information, from a source entitled to credit, that the people of Yünnan were being excited against Mr. Grosvenor's mission, I at once called the Prince of Kung's attention to the report. I inclose copy of my note, and translation of the Prince's reply.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

Inclosure 1 in No. 56.

*Mr. Wade to the Prince of Kung.*

*Peking, September 27, 1875.*

MR. WADE presents his compliments to the Prince of Kung and the Ministers of the Tsung-li Yamên.

News has just reached Mr. Wade, from an authority entitled to respect, that it is in contemplation, in the event of Mr. Grosvenor's being sent to Yünnan, to stir up the people on his arrival, for the purpose, if no worse, of intimidating him and his interpreter.

Mr. Wade will be much obliged to His Imperial Highness and the Ministers of the Yamên to inform him if they have received any recent news from Yünnan.

Inclosure 2 in No. 56.

*The Prince of Kung and the Ministers of the Yamên to Mr. Wade.*

(Translation.)

*September 28, 1875.*

THE Prince and Ministers have to acknowledge the receipt of Mr. Wade's note, stating that he had just heard that it was in contemplation, in the event of Mr. Grosvenor's being sent to Yünnan, to stir up the people on his arrival, for the purpose, if not worse, of intimidating him and his interpreter.

The Prince and Ministers would observe in reply that, friendly relations having subsisted for so many years between China and Great Britain [it is not conceivable that] any design to cause harm to befall [Mr. Grosvenor] should be entertained. On the other hand, ignorant and ill-intentioned persons set themselves to stir up strife and to incite the minds of others, their constant delight being the production of mischief. In all cases of this description, the Prince and Ministers have never given an unwarranted belief [to the reports spread abroad]. They have made it a rule to punish the offender with the utmost rigour of the law, as a warning for the future.



If the report that has now reached Mr. Wade has been derived from a Chinese source, they must beg to be fully informed as to the individual, in order that proceedings may be instituted, and the matter judicially dealt with. This will secure the result of making evi-disposed persons careful not again to give rise to occasions of trouble, and at the same time contribute toward the important object of maintaining in their integrity the duties of friendly relations.

They beg further to add [in reply to Mr. Wade's inquiry], that no authentic news has been received of late from Yünnan, and they avail, &c.

No. 57.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

My Lord,

*Shanghae, October 21, 1875.*

MY previous despatch of this date \* reports proceedings up to the 27th September inclusive. The 28th was passing away, and Mr. Mayers had not been invited to the Yamèn, as it was promised he should be; neither had I received any other indication of a disposition to accede to my demands.

I accordingly prepared the inclosed note to the Prince of Kung, and the translation was being copied, when the manuscript edition of the "Peking Gazette" of the day was put in my hand. It contained a Decree in the sense I required, upon intercourse with foreign Ministers. I therefore added a postscript to my despatch in which I extended the term fixed by one day. I suggested that Mr. Mayers should wait upon the Ministers of the Yamèn on the following day at whatever hour they chose to name.

As the messenger was starting with this document, an official note arrived from the Prince of Kung, embodying the Decree referred to, and inclosing the Yamèn's Memorial which had elicited the Decree.

I inclose translations of the note and the Memorial, which, in many respects, is by far the best paper ever published (it has been since published in the "Gazette") upon foreign relations by the Government of the Empire.

This high praise has at the same time to be qualified to a certain extent. Your Lordship will recollect that my reason for setting such store by a declaration of the kind was that the British Government had been spoken of, to put it as inoffensively as possible, without due recognition of its equality to the Government of China. The form of writing against which I had protested has been times without number defended on the ground that the Emperor's Decrees are not addressed to foreign Governments or persons, and that the adoption of such a change as I have pressed for would carry with it an abatement of the deference which the subjects of the Emperor should show towards His Majesty. The Yamèn's Memorial aims, no doubt, at an assertion of this principle rather than any other. At the same time another principle is asserted, and that a principle of great importance, the equality, namely, of Governments, which has never been thus publicly admitted. It farther inculcates the expediency of establishing Missions abroad, and of improving intercourse with the foreign Missions established in Peking. There is not a word in the paper at which a foreign representative could take offence; and even if its appearance, which is as likely as not, be followed by no immediate results, the Memorial and Decree must be regarded as marking a new era in foreign relations with China.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

P.S.—I beg to add copy of the reply I addressed the Prince of Kung, acknowledging communication of the Decree and Memorial above referred to.

T. F. W.

Inclosure 1 in No. 57.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, September 28, 1875.*

I HAVE the honour to refer your Imperial Highness to my despatch of the 26th and my semi-official note of the 27th instant.

In my despatch of the 26th I assumed that the Grand Secretary Shên, and the Minister Tung would have informed your Imperial Highness of what passed between their Excellencies and myself when I was at the Yamên on the 25th instant.

I gave their Excellencies to understand that I should require a satisfactory answer upon three subjects: the position of the British Representative at Peking; the adjustment of taxation on British imports; and the issue of the necessary authority to enable a competent official to discuss the Yunnan frontier trade of Burma with the head of a Mission from India; and that unless I should receive such an answer by this evening, I should pursue the course which I announced that it was my intention to pursue in my despatch of the 17th, forwarded to your Imperial Highness upon the 18th instant.

As I was leaving the Yamên I asked the Ministers what steps would be taken for the further discussion of the second question within the term thus prescribed, and the Grand Secretary Shên promised that Mr. Mayers, the Chinese Secretary, should be invited to the Yamên for the purpose.

The promised invitation has not been sent to Mr. Mayers. I shall, therefore, act as in my despatch of the 17th instant I said I would. Mr. Grosvenor will proceed to England, and I shall at once withdraw the Legation, and the British communities of the northern ports, as soon as their removal can be effected.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

P.S.—As this despatch was being copied, the manuscript “Gazette” of this evening was put into my hand. It contains a Decree replying to a Memorial of the Tsung-li Yamên on the forms of Decrees. I suppose Decrees relating to foreign States, and of intercourse between the chiefs of Departments in Peking and foreign Representatives. Assuming that the Decree is authentic, I am willing to put the most favourable construction on the Tsung-li Yamên’s action in the matter; but after all that has fallen from the Grand Secretaries Wênsiang and Shên, especially the former, regarding the difficulties to be looked for in this matter of intercourse, I must be more exactly informed before I accept this action as sufficient. I must observe that I am still without a word from the Yamên on the subject of the two other propositions. I will wait till to-morrow evening, and if I am then without such an intimation on the two points in question as I can report to Her Majesty’s Government is satisfactory, I shall adhere to my decision to withdraw the Legation. I have to prove to Her Majesty’s Government that the Chinese Government is not trifling with me, and if the Chinese Government is seriously determined not to trifle, it will have no difficulty in supplying me with proof.

Mr. Mayers will call at the Yamên to-morrow at whatever hour it may suit the Ministers to receive him.

T. F. W.

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Inclosure 2 in No. 57.

*The Prince of Kung to Mr. Wade.*

(Translation.)

*Peking, September 28, 1875.*

THE Prince of Kung to Her Britannic Majesty’s Minister:

The Yamên of Foreign Affairs addressed this day a Memorial to the Throne, on the subject of intercourse between the heads of the different Departments of State and the foreign Representatives at Peking, in reply to which a Decree has been issued in the following terms:—

“The Tsung-li Yamên has presented a Memorial, praying a declaration from the Throne on the subject of certain prescriptions in our Decrees, and regarding the conclusions arrived at [by the Yamên] in the matter of intercourse between the chiefs of the principal Departments of State and the foreign Ministers residing in the capital. The explanation of the prescriptions that apply to the Decrees is perfectly correct. As regards intercourse with the chiefs of Departments, we command that action be taken in the manner the Yamên has proposed.”

The Prince would observe that in the case of Envoys who are sent from one country to the other [he is aware that] the privilege of having audience of the Sovereign is enjoyed as well as that of intercourse with the principal officers of Government; and in China audiences have already taken place on several occasions. His Majesty at present on the throne not having as yet, however, assumed the administration of the Government in person, this is a subject which it is not expedient to bring at once [*lit.*, abruptly]



under discussion. Assent having been signified to the Memorial presented this day, with reference to the question of intercourse between the heads of the different Departments of State and the foreign Ministers at Peking, it is the Prince's duty to forward the foregoing copy, reverently made, of the Decree received, and a copy likewise of the Memorial presented by the Yamên for the British Minister's information.

Kuang Sü, 1st year, 8th moon, 29th day.

Inclosure 3 in No. 57.

*Memorial regarding Intercourse with Foreign Ministers.*

(Translation.)

Memorial of the Tsung-li Yamên, which appeared in the manuscript copy of the "Peking Gazette," on the 29th September, 1875.

YOUR Majesty's servants Yi-sin and his colleagues (the Prince of Kung and the Ministers of the Tsung-li Yamên), upon their knees present a Memorial. They enter with detail into the question of personal intercourse between the Chinese and the foreigner, and they pray a Decree which, as a declaration from the Throne, may dissipate men's doubts, and hinder suspicions and misunderstandings.

In the 5th moon of the present year, the Yamên of your servants presented a Memorial, in which they prayed that a reserve might be formed of persons thoroughly conversant with foreign affairs. They had the honour to receive a Decree, approving this proposition; and at a later period a second Decree, directing Kuo Sung-tao, expectant Shih Lang (Vice-President), and Hsü Ch'ien-shên, an expectant Tao-tai (Intendant), on the staff of the Province of Chih-li, wearing the insignia of the 2nd grade, to proceed on a mission abroad.

Prostrate, your servants would observe that, when praying the formation of a reserve of persons thoroughly conversant with foreign affairs, the object they had in view was not simply the transaction of business in which Chinese and foreigners may be jointly concerned. Missions to foreign States and the question of intercourse lay equally within their prayer. Men's minds, in fact, must have free access to each other before angry collisions between them can be prevented. If there are to be no collisions they must thoroughly acquaint themselves each with the position of the other.

In the 6th year of the reign Tung Chih (1867), Chih-kang and Sun Chia-ku (subordinates) in the Yamên of your servants, went as envoys to different States.\*

On their return they mentioned that visits had been interchanged between them and the high officers of the different departments of the foreign States [in question]. Your servants have also been spoken to repeatedly upon the subject by the Ministers of foreign States residing in the capital; their remark being that as visits were never exchanged between the high officers of State Departments and the Ministers of foreign nations in the capital, it was not astonishing that, when their authorities kept thus aloof, the lower orders should make light of the officials and people of foreign nations.

Your servants would observe that if visits have so far neither been paid nor received by the high officers of departments in the capital, their practice has been but in scrupulous conformity with the principle "that† officials have no intercourse [with foreigners]." On the other hand, China has long since entered into friendly relations with foreigners; Missions are being sent abroad; the circumstances of the past and present time are not the same; and though it is not possible to treat [foreign] Envoys in every way as they are treated in foreign States, eastern or western, still it does not for all that appear necessary that there should be no intercourse with them whatever.

It is the duty, therefore, of your servants to pray a Decree directing their Yamên to consider and decide with the high Departments of State the [future] conditions of this intercourse, to the end that the motives suggesting it may be thoroughly comprehended, and that while, on the part of those entering into intercourse, any possible misgivings [on the subject of etiquette], may be more or less prevented, those not yet entering into intercourse may come to understand the relations of the Chinese with the foreigner.‡

\* More properly the different States, namely those in Treaty relations with China. The two Envoys named accompanied Mr. Burlingame.

† Quotation from the Li Ki, the Book of Obligations and Observances, commonly spoken of as the Book of Rites.

‡ The precise meaning of the passage is not clear. It seems to be that when the etiquette to be observed has been agreed upon, high officers in Peking and Foreign Ministers will have intercourse. Those not yet in intercourse, it is suggested, are either high officers of the lesser courts, or authorities in the provinces not open to trade. The word rendered relations includes all political and commercial.

Herein is the significance of intercourse between public servants, and it is indispensable that all, both native and foreigner, should be made to understand it thus.

[There is another matter to be mentioned.] In the relations of Governments of equal dignity, no superiority is [asserted] on either side. But there is a point on which foreign Governments are not duly informed. It constantly happens that, when, in copies of Imperial Decrees, words indicating this or that Government are seen to be in the body of the column, [the foreigner] will suspect that the inferiority of his Government is implied. His Government, he fears, will consequently be looked down upon by the officials and people of China.

It has been again and again explained that in Imperial Decrees, as these are commands addressed only to the officials and people of China [no foreign Government's designation] can lawfully be raised above the column. So in State Letters (*sc.* of Credence, &c.) [words of the kind] are invariably elevated. In the letters, for instance, that have on different occasions passed between the Sovereigns of China and of foreign States [the Ruler's designation] has been so elevated on both sides. The word designating the Government of the great Power addressed has also been elevated. The fact that in the Treaties with foreign States the words are so printed, is an additional proof [that their equality is admitted]. Why, then, should a distinction as between superior and inferior be suspected?

It is difficult, however, notwithstanding the repeated explanations given, to convince every one, native and foreign, of the truth, without a Declaration from the Throne. It is also too possible that some ignorant person of bad character may make mischief of the matter.

Herein is the significance of intercourse between Governments, which it is indispensable that all, both native and foreigner, should be made to understand.

The two questions above submitted have been very carefully considered by your servants. They are seriously apprehensive lest, on one side or the other,\* motives may not be thoroughly appreciated. At the same time [there are practical difficulties to be met], and to carry a measure of formality by force, without due precaution against evils in substance that might ensue from it, would infallibly entail consequences of the most serious importance to foreign relations; the point it was sought to approach being further than ever removed, the effort made to gain an advantage having resulted in loss.

[Under these circumstances, your servants] venture to state their views detailedly and explicitly, and, looking upward, they implore your Majesty graciously to accord a Declaration from the Throne, that may dissipate the doubts of the many and render the great stake secure.†

On their proposition, be its merits what they may, they prostrate beg to the sacred glance of the Empresses [Regent] and the Emperor.

A respectful Memorial.

The Decree in reply has been copied (*sc.* published.)

#### Inclosure 4 in No. 57.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, September 29, 1875.*

AS my communication of last evening was leaving the Legation, I received your Imperial Highness' note embodying the Imperial Decree to which mine had requested attention, and inclosing copy of the Tsung-li Yamên's Memorial to which the Decree was a reply.

The authentication of the Decree is thus complete, and having now had time to peruse carefully both documents, I am enabled to assure your Imperial Highness of my conviction that they will be read with satisfaction by every well-wisher to China.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

\* The two sides are Chinese and foreign Ministers, in the consideration of one of the two questions; and the Ministers of the Tsung-li Yamên and other departments, in that of the other.

† The great stake or board, *ta chü*, is any important matter in hand; here foreign relations. The word *secure* is the verbal rendering of *wei*, properly the rope which binds a net on the four sides, and keeps it together; also used of the four upright columns that give stability to the framework of a house.



*Mr. Wade to the Earl of Derby.—(Received December 12.)*

(Extract.)

*Shanghai, October 21, 1875.*

IN accordance with my proposition (Inclosure 4 of my other despatch of this date),\* Mr. Mayers proceeded in the forenoon of the 29th September to the Yamèn. Mr. Grosvenor was to take leave of the Ministers in the afternoon, and having allowed him a little law for purposes of ceremony, I followed.

The sum of my questions in speech or writing was this :—Was I, or was I not, by the evening of the 29th, to receive the assurances I had demanded regarding taxation of trade at the ports and inland, and regarding consideration of the frontier trade in Yünnan? The contention of the Ministers, early and late, was that I had already received the very assurances for which I was still pressing.

I reviewed at great length the whole of the antecedent discussion, guarding myself against any show of irritation. But I insisted emphatically that I could now accept no compromise; that I must go if my guarantees were not conceded; that if, after the evening of the 29th, negotiations were resumed, I should put forward fresh demands.

Shortly after my return home, I received a note from the Prince of Kung, of which I inclose translation.

For the moment, all hope of adjustment appeared at an end. Not only was the time I had named past, but the winter was approaching; and if I had expected anything from the protraction of the discussion, it was scarcely open to me to protract it; if the Legation and the communities were to be withdrawn. I resolved accordingly to withdraw them, as soon as the necessary notices to my colleagues and to the northern port communities could be prepared.

Inclosure 1 in No. 58.

*The Prince of Kung to Mr. Wade.*

(Translation.)

*Peking, September 29, 1875.*

THE Prince received on the 26th instant two communications† from the British Minister, to which a reply had not yet been sent, owing to the fact that action was in process of being decided upon, when a note was further received on the 27th instant, in which the British Minister stated that he was in some doubt as to the meaning of the sentence (in a note just received from his Imperial Highness) to the effect that the Tsung-li Yamèn had proposed to address a Memorial to the Throne, and further, that the note under acknowledgment contained no reference either to the taxation of trade at the ports, or to the trade between Burma and Yünnan, as also that the Ministers with whom the British Minister has been in conference on the above subject spoke of them as if the concession of what is required were something extravagant to exact of China, and at the same time a matter of extraordinary favour to the British Government.

To this note a reply was in course of preparation, when, on the 28th instant, the British Minister's despatch was received, referring to the Decree which he had read in the "Gazette," giving sanction to the Tsung-li Yamèn's Memorial on the subject of relations with the foreign Ministers at Peking, and stating that he should wait until the following evening, when, if without a satisfactory reply on the subject of the two other propositions, he should adhere to his decision to withdraw the Legation from Peking.

The Prince has to state that, with reference to the Decree respectfully received in reply to the Memorial presented [by the Yamèn] on the 28th instant, a communication has already been addressed to the British Minister, and that the expression [in the Prince's note of the 27th instant] upon which information was requested, indicated the fact that the Memorial was actually in process of being drawn up.

The doubt in which the British Minister found himself may be attributable, perhaps, to the fact that the Chinese form of expression differs [from what might be used in English].

As to the view taken by the Tsung-li Yamèn of its prayer for authority to confer with the chiefs of the different Departments, and decide upon the subject of intercourse

\* No. 58.

† *i.e.*, the despatch dated the 26th instant, and the Chinese text of the despatch of the 24th instant, the English text of which had been delivered to the Ministers on that day.

between them and the foreign Ministers at Peking, the Prince and his colleagues have by no means considered this in the light of an extraordinary favour. Conscious as they were of the fact that the matter in question was a matter *sui generis*, they were perfectly aware that it was no easy task to achieve. The purpose for which they felt bound to carry it into effect was that a guarantee should thereby be given [of] improvement in foreign relations, with a view of guarding against causes of international disagreement hereafter, and not by any means solely on account of the affair that has taken place in Yünnan.

In connection with the taxation of trade, again, whatever particulars may call for consideration with a view to action being decided upon, ought to be taken into consideration as the occasion for it presents itself; and here, also, it is by no means as a consequence of the Yünnan affair that an agreement to consult and act in the matter has been signified. Within the last few days the Inspector-General of Customs, Mr. Hart, has been directed to consider the question carefully and in detail.

In respect of the questions relating to trade on the frontier of Yünnan, the Tsung-li Yamên has already consented to enter into negotiations; and in this respect, also with the view of guarding against disagreements, the promise was given that an official should be appointed to make inquiry after the case now pending in Yünnan shall have been wound up.

The foregoing particulars have all been stated repeatedly to the British Minister personally, and likewise in communications to his address. Notwithstanding this he now writes that not a word of mention of them has been received, and, fixing a limit of one day, his ultimatum is, that unless he receives a satisfactory reply, he will leave Peking. Thus, in matters in which the Prince, for his part, has already agreed to negotiate with the British Minister with a view to genuinely satisfactory results, the British Minister, on the contrary, seems to cherish an intention of using compulsion. The consequence is that, although the desire to enter into arrangements [or, consultation with a view to action] be entertained, this cannot be done; and although it be wished to prevail [on the British Minister] to remain, this object is beyond reach. To sum up: there is no time or subject at or with reference to which the Prince and his colleagues have been otherwise than willing to negotiate with the British Minister, notwithstanding which, he writes to them in the words he has lately addressed to them. Let but the subject be examined in its details, and the correspondence that has passed be appealed to, and it will become patent to every eye whether, in the relations between the Chinese and the British Governments, or in the conduct of affairs between the Prince and the British Minister, there has been a disposition, even in the least possible degree, to trifle with him.

This communication is accordingly forwarded in reply.

Kuang Sü, 1st year, 9th moon, 1st day.

Inclosure 2 in No. 58.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, September 30, 1875.*

I HAVE the honour to acknowledge your Imperial Highness' communication received last evening. I regret to find in it nothing that will enable me to depart from the decision earlier announced to your Imperial Highness. It will be my duty in a day or two to address your Imperial Highness at greater length.

I renew, &c.

(Signed)

THOMAS FRANCIS WADE.

No. 59.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

(Extract.)

*Shanghai, October 26, 1875.*

I RESUME my narrative at the point at which I left it in my despatch of the 21st instant. I stated therein that I had determined to withdraw the Legation and the northern ports' communities.

The inclosed note, dated the 1st instant, to the Prince of Kung, was accordingly



drafted and translated; but pending the further explanations I was expecting from Mr. Hart, I detained it.

In the forenoon of the 3rd instant Mr. Hart called on me. He had had a long conversation with the Grand Secretary Wënsiang the day before (the 2nd instant), and his Excellency had closed the interview by desiring Mr. Hart to submit some proposition regarding taxation of foreign trade that would be feasible for China, and acceptable alike to all the Treaty Powers.

Mr. Hart had, of course, promised to do his best, but had expressed his doubts that, at the present juncture, the measure would be of any avail, as I had determined on taking the step I had announced.

Before he left the Legation, Mr. Hart received a note, summoning him to the Yamên. I authorized him to tell the Ministers that he had left me engaged upon the papers I have mentioned, and to remind them of what I had said on the 29th September, namely, that, that day passed, I should not resume negotiations without putting forward fresh propositions.

He proceeded to the Yamên, and was there received by the Grand Secretary Wënsiang and five other Ministers. They handed him my note of the 2nd (Inclosure 2) to read, and he, Mr. Hart, was again instructed, in what I consider very satisfactory terms, to report on the whole commercial question with a view to its adjustment.

Having reached this point, Mr. Hart thought it advisable, before repeating what I had authorized him to say, to consult me. He returned to the Legation accordingly for that purpose.

I begged him to deliver my message of the morning, to point out that what I had sought was not the material advantage of this or that concession, but the guarantee of good faith that the removal of a standing grievance, and the promise regarding Yünnan trade, would have afforded; that the situation was now changed; that I pressed for the concessions earlier-named no longer, but for the publication either of the Decree and Memorial censuring the Governor of Yünnan, which had been communicated to me at Tien-tsin, or of a fresh Decree ordering the Governor and the Momein officials to Peking.

I felt clear that I must have something in addition to my earlier programme. I had assured the Ministers very positively on the 29th September that, unless what was then before them were yielded, fresh demands would be inevitable. Had I gone back to the trade questions, pure and simple withal, it would have been assumed that my real object after all was trade, and none other.

After much reflection, I decided that foreign interests could hardly be more advantaged than by a Decree recalling the attention of the Provincial Governments to the Treaty provisions affecting the right of travel under passport. The demand, at the same time, was so simple, that evasion of it would perfectly free the hands of Her Majesty's Government in any decision to be hereafter taken. Mr. Hart was to go to the Yamên early in the day (4th instant), and I accordingly wrote to him that I would substitute this demand for that of the previous evening, requiring at the same time, however, a despatch that would assure me of the Yamên's *bond fide* intention to instruct him to frame such a report as the Grand Secretary had spoken of, and a second despatch engaging the Chinese Government to authorize consideration of the Yünnan frontier trade in the manner I had proposed.

At the Yamên, Mr. Hart found the Grand Secretary Wënsiang, and with him the Grand Secretary Li Hung-ch'ang, who, in his capacity of Governor-General of the Province of Chih-li, had come up to superintend the funeral procession of the late Emperor, whose coffin was to be attended by the whole Court to the mausoleum on the 16th. After a very long conference, in which, although an understanding was arrived at that the two despatches should be shown me in draft, if I would show my draft replies, still nothing was settled about the Decree. The Grand Secretary Li begged Mr. Hart to go to the Legation and to say that his Excellency would presently come to see me. He would be glad that Mr. Hart should remain till he came.

I had meanwhile received a despatch from the Prince of Kung (Inclosure 3), replying to mine of the 1st and 2nd instant. It was directed principally to the bean-trade question, the Grand Secretary's observations regarding which, it contended, had been misunderstood, and closed with an assurance that the Prince was ready at all times to negotiate [literally, confer and take action] with me, and on any subjects.

I at once sent Mr. Mayers to the Yamên with the inclosed Memorandum of instructions, to ask for explanation of the expression "confer and take action," but more particularly to impress upon the Ministers once more the real object of my demands, and the danger of rejecting them.

Shortly after Mr. Mayers' return to the Legation, the Grand Secretary Li arrived, accompanied by Hsü Ch'ien-shên, his relative by marriage, who is to be one of the two Envoys to be sent one day to England.

Inclosure 1 in No. 59.

*Mr. Wade to the Prince of Kung.*

Sir,

October 1, 1875.

IN my reply of the 30th September to your Imperial Highness' communication of the 29th, I had the honour to state that I should write at greater length to your Imperial Highness in a day or two.

It was my intention at the time to review what had passed since the 17th September, the day on which I wrote to announce that I had decided on the withdrawal of the Legation and the northern port communities.

It appears to me, on reflection, unnecessary to repeat again what has been so often repeated. I have forwarded to Her Majesty's Government copies of all correspondence and notes of all conferences up to my departure from Tien-tsin on the 8th of September. Her Majesty's Government will now be similarly informed of all that has passed in speech or writing since that date. Whether I am justified in asserting that I have been trifled with, Her Majesty's Government, with this information before it, will be well able to judge.

I shall proceed at once to withdraw the Legation, and I shall instruct Her Majesty's Consuls at the ports of Tien-tsin and Newchwang to give notice to the British communities at those ports that they must retire before the rivers are closed. The members of these communities will file inventories of such property as they may be unable to take away in their respective Consulates, and compensation for any loss they may sustain will be claimed in due time of the Chinese Government.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

Inclosure 2 in No. 59.

*Mr. Wade to the Prince of Kung.*

Sir,

October 2, 1875.

THE foregoing communication was ready for transmission to your Imperial Highness yesterday, but I kept it back for a particular reason.

It is needless to review all that passed between my visit to the Yamên on the 25th, when I renewed negotiations on the subject of the three guarantees, and my receipt of your Imperial Highness's note on the evening of the 29th.

I briefly acknowledged this note on the 30th, promising to write presently at greater length. In the meantime, as it was stated in your Imperial Highness' despatch that Mr. Hart had been directed to consider the question of taxation of trade carefully and in detail, I requested that gentleman to inform me what instructions he had received. He answered none, but, as it was possible there might be some misunderstanding on the point, he begged me to take no further step until he should have spoken to the Ministers of the Tsung-li Yamên. I consented, and, according to a letter from him now lying before me, he waited upon their Excellencies upon the 30th of September and the 1st instant.

What was said to Mr. Hart by the Ministers who received him on both days has, of course, been reported to your Imperial Highness, and there is but one part of the conversation to which I propose to refer. Mr. Hart was informed yesterday, the 1st instant, by the Ministers Tung and Ch'ung that, as a concession, the import trade might be freed from "li-kin" taxation within the limits of the foreign settlements, and that, to balance this boon, the old interdiction upon foreign trade in bean-cake at Chefoo and Newchwang would be reimposed. This, their Excellencies informed Mr. Hart, was the positive decision of the Grand Secretary Wên-siang.

Now, the removal of the prohibition referred to was granted under circumstances which I well remember. Ningpo had fallen into the hands of the Taeping rebels in the month of December 1861, and great fear was entertained at Peking that they would make a dash at the Taku forts, which, at the time I speak of, were still occupied by the troops of England and France.



The Grand Secretary Wênsiang asked me if Sir F. Bruce would guarantee the forts against capture by the rebels, and Sir F. Bruce undertook to guarantee them provided the trade in bean-cake at the ports above-named were thrown open. An Imperial Decree approving the opening of the trade to foreign shipping was issued on the 19th February, 1862, and was communicated to the foreign Legations in a despatch from your Imperial Highness, dated the 22nd February.

The concession was formally confirmed, first, in the year 1863, by the exclusion of the interdict from Rule V of the Supplementary Regulations appended to the Danish Treaty; and similarly in the year 1869, when the Austro-Hungarian Treaty was negotiated.

Whether under these circumstances the Powers whose nationals are interested in the bean-trade would consent to their abrupt exclusion from the trade, is a question of which the consideration may well be postponed. The intimation, at the same time, of the possibility of such a measure, especially at this juncture, is by no means without significance.

The positive decision of the Grand Secretary Wênsiang, communicated thus formally to the Inspector-General of Customs, amounts to this, that certain taxes upon trade, which have been protested against as being imposed in violation of Treaty, shall, as a favour, be laid no longer upon the trade in a certain limited area occupied by foreign communities within which area no trade exists, and that, as a set-off against this favour, a privilege, conceded in exchange for an important service rendered the Chinese Government, and subsequently confirmed to the foreigner by Treaty, shall be withdrawn.

If the positive decision of the Grand Secretary Wênsiang represent the positive decision of the Chinese Government, I can only say that no words could better substantiate the charge of trifling so deprecated in your Imperial Highness's despatch of the 29th September.

(Signed) THOMAS FRANCIS WADE.

Inclosure 3 in No. 59.

*The Prince of Kung to Mr. Wade.*

(Translation.)

Peking, October 4, 1875.

THE Prince received on the 2nd instant the British Minister's two despatches, dated respectively the 1st and the 2nd instant; in the first of which he states that he is about to withdraw the Legation at once from Peking; and in the second he refers to a statement of the Ministers Tung and Ch'ung to the Inspector-General of Customs, Mr. Hart, as to a positive decision on the part of the Grand Secretary Wênsiang in connection with the interdict on the bean-trade at the northern ports, the reimposition of which was to counterbalance the withdrawal of the li-kin tax from the settlements at the ports. This, it was observed, was a sufficient testimony to the truth of the British Minister's statement that he was being trifled with.

The Prince has questioned the Ministers Tung and Ch'ung, who state that, in their conversation with Mr. Hart on the day referred to, neither of them uttered a syllable with reference to the bean-trade; and that, although the Tsung-pan Tung, who did deliver a message from the Grand Secretary, referred, when speaking with Mr. Hart on the question of li-kin, to the circumstances connected with the removal in times past of the interdict on the bean-trade, the Grand Secretary's meaning was not as is represented in the despatch received from the British Minister.

The expression "positive decision" [was used in this wise]. The Grand Secretary, while lying ill at his private residence, after concluding what he had to say to the Tsung-pan Tung, added that in all arrangements that it was proposed to make, his positive decision was that, as a first essential, injurious consequences must be guarded against. This was a general observation, embracing the whole subject. The Grand Secretary Wênsiang has addressed a separate note on this subject to the British Minister, and furthermore, the Ministers Tung and Ch'ung have confronted their statements, in an interview at the Yamên, on the 3rd instant, with Mr. Hart, in a manner perfectly distinct. Abundant testimony is thus forthcoming in support of the Prince's statement in his despatch of the 29th ultimo, that there has been no disposition, even in the least possible degree, to trifle with the matter.

The reply he has to make to-day to the British Minister's communication of the 1st instant, is simply a repetition of the words he used in his despatch of the 29th

ultimo, viz., that there is no time or subject at or with reference to which he is otherwise than willing to negotiate with the British Minister.

He accordingly forwards this reply for the British Minister's information.

Kwang Sü, 1st year, 9th moon, 6th day.

No. 60.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

(Extract.)

*Shanghai, October 26, 1875.*

MR. MAYERS waited on the Grand Secretary Li, as in my previous despatch of this date I stated that it was agreed he should, on the morning of the 5th instant. His Excellency had been in the Palace since an early hour, and my demand had been warmly discussed. Before noon, however, came the note from the Prince, receipt of which I had impressed on his Excellency Li was the condition of my remaining for another day or two. I inclose translation of the semi-official note, and of my reply to it, in which I acknowledged His Imperial Highness' communication of the 4th instant.

In the afternoon Mr. Hart brought me the drafts of the two despatches I had required, and as soon as my replies could be translated, drafts of these were handed him for transmission to the Yamên. He was so good as to charge himself with these papers, and, in the course of the following day, the 6th instant, I received formal copies from the Yamên, and answered them accordingly. I inclose translations and copies of the four notes thus exchanged.

Upon the 9th I received a return visit from the Grand Secretary Pao, and the Ministers Tung, Ch'ung, and Hsia, and later in the day the inclosed despatch from the Prince of Kung, embodying the expected Decree. Appended to it was the Yamên's Memorial, translation of which, in print, is also inclosed.

I replied the following morning, taking care to observe that, in a telegram that had reached me only on the 6th instant, your Lordship had desired me to repeat that the fullest inquiry into the Yunnan outrage was expected, and that I was now about to proceed to Shanghai to give Mr. Grosvenor his instructions. I was particular in mentioning that these would certainly direct him to Manwyne, and, if he saw fit, to Bhamo.

Inclosure 1 in No. 60.

*The Prince of Kung to Mr. Wade.*

(Translation.)

*October 5, 1875.*

THE Prince writes specially to inform Mr. Wade that the Grand Secretary Li has just now carefully considered with the Prince the question relating to a distinct declaration on the subject of protection [as guaranteed] by Treaty, which formed the subject of conversation yesterday between Mr. Wade and the Grand Secretary; and he has to state that the step of laying a Memorial representing [the question] before the Throne is one which the Yamên can, in fact, undertake. The language to be used in the Memorial, however, calls for more than ordinary care and forethought, and it will be necessary to draft the document with such due consultation on the part of the Ministers of the Yamên as shall be conducive to a beneficial issue. So soon as the draft shall have been finally decided upon, the Memorial can be prepared for presentation to the Throne.

In forwarding this note, the Prince avails himself, &c.

Inclosure 2 in No. 60.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, October 5, 1875.*

I HAVE the honour to acknowledge your Imperial Highness' communication of the 4th instant, which I received yesterday, and I have now to thank your Imperial Highness for the semi-official note of this afternoon. I am gratified by your Imperial Highness' promise that there shall be submitted to the Throne a Memorial on the subject of passports, in the sense I had represented to the Grand Secretary Li I should require when his Excellency was at the British Legation yesterday. As I observed to



the Grand Secretary, the essential is that a reference should be made to the attack on a British Mission travelling in Yünnan provided with passports and the murder of their interpreter.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure 3 in No. 60.

*The Prince of Kung to Mr. Wade.*

(Translation.)

Peking, October 6, 1875.

WITH reference to the question of trade on the frontier of Yünnan, the Yamên of Foreign Affairs has already consented to negotiate with a view to arrangements on this subject, as the British Minister was given to understand on the 29th of September. The Prince has now to state that it will hereafter be the duty of the Chinese Government to appoint an officer to proceed to the Yünnan frontier to examine the conditions under which the trade is carried on. On the other part, it will be the duty of the British Government to appoint an officer to proceed to the same locality and join with the officer deputed by the Chinese Government in making a careful investigation. After this shall have been done, the Yamên and the British Minister will confer together with a view to the due establishment of regulations, and the action thereupon.

This communication is accordingly forwarded for the information of the British Minister.

Kuang Sü, 1st year, 9th moon, 8th day.

Inclosure 4 in No. 60.

*Mr. Wade to the Prince of Kung.*

Sir,

Peking, October 6, 1875.

I HAVE the honour to acknowledge receipt of your Imperial Highness' despatch of this date, regarding the trade on the Yünnan frontier, which, in the accompanying Chinese version, I quote at length.

I accept the engagement given in this despatch as satisfying the conditions required in my correspondence on the subject referred to.

On my part I engage that, until the inquiry into the Momein outrage be completed, the Mission from India, for which I have already obtained passports, will not be sent to Yünnan.

I renew to your Imperial Highness the assurance of my most distinguished consideration.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure 5 in No. 60.

*The Prince of Kung to Mr. Wade.*

(Translation.)

Peking, October 6, 1875.

THE Prince informs the British Minister that, with reference to the rectification of taxation on trade at the Treaty ports, the Yamên of Foreign Affairs wrote on the 22nd of last month to desire the Inspector-General of Customs, Mr. Hart, to come to the Yamên, for the purpose of submitting his views in the matter; and the Yamên has since forwarded him a Memorandum which they had drawn up for him to look over. They have now farther sent him official instructions, desiring him to prepare a Report in detail, based upon this Memorandum. After taking [this Report] into consideration, the Yamên will proceed to consult with the British Minister upon it.

This communication is accordingly forwarded for the British Minister's information.  
Kuang Sü, 1st year, 9th month, 8th day.

## Inclosure 6 in No. 60.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, October 6, 1875.*

I HAVE had the honour to receive your Imperial Highness' despatch of this date regarding the taxation of trade, which in the accompanying Chinese version I quote at length.

I accept the promise given in this despatch as satisfying the condition required in my correspondence on the subject referred to.

I renew, &amp;c.

(Signed) THOMAS FRANCIS WADE.

## Inclosure 7 in No. 60.

*Memorandum of Interview between Mr. Wade and the Ministers of the Yamên.**Peking, October 7, 1875.*

MR. WADE, with the Honourable H. G. Edwardes and Mr. Mayers, called at the Yamên to take leave before proceeding to Tien-tsin, Mr. Edwardes, at the same time, taking leave on his departure for England. The Ministers present were their Excellencies Tung, Shên, Ch'unghow, and Hsia, with the Tsungpan Tung.

After the usual formalities, Mr. Wade expressed to the Ministers his wish, without in any way hurrying the Prince, to know when the Decree that has been promised should be published. He repeated to the Ministers what Mr. Mayers had been instructed to say in the morning to the Grand Secretary Li, with reference to the position in which he finds himself, the necessity for giving information to the foreign Representatives and the community at Tien-tsin, and reporting to Her Majesty's Government.

The Minister Shên replied, measuring his words very carefully, to the effect that the Memorial would certainly be presented in fulfilment of the pledge given, but that its preparation requires cautious deliberation. It is a document which is to be read not only by foreigners, but by Chinese, and it must be so worded as to content the subjects of the Empire. The draft had not yet been finally decided on, but so soon as this had been done, and the pending stress of business in connection with the Imperial funeral shall permit, it shall be presented. He would commit himself to no statement as regards the probable time when the Decree will be issued.

## Inclosure 8 in No. 60.

*The Prince of Kung to Mr. Wade.*

(Translation.)

*Peking, October 9, 1875.*

THE Yamên of Foreign Affairs, having memorialized the Throne, setting forth a declaration of the Treaty provisions regarding protection to the bearers of passports, the following Imperial Decree was received this day:—

“The Yamên of Foreign Affairs has memorialized us, setting forth in distinct terms the provisions of the Treaties with different countries, and requesting that injunctions be laid upon the Governments of all the provinces to act in obedience [to these stipulations]. [With reference to the privilege enjoyed by] foreigners of travelling in the interior, it is distinctly provided in all the Treaties that passports must be taken out, which must be impressed with a Chinese official seal, and which must be presented for inspection whenever required, whereupon passage will be granted. It is furthermore stipulated that in the event of any unlawful act being committed [by the bearer of a passport], he shall be handed over to the nearest Consul to be dealt with, being subjected only to the necessary restraint while on the journey, but not allowed to be maltreated. Passports are not to be given to any but persons of respectability.

“The Treaty provisions are distinct in the extreme, and there should be no difficulty in attending to them as may be necessary on the part of local authorities. In the case which has lately occurred, of the British Official Interpreter Margary, who has been murdered on the frontier of Yünnan, we have already appointed Li Han-ch'ang as Commissioner to proceed without delay [to the province], in order to ascertain by whom the murder was committed, and to take action. After [the promulgation of the present



Decree], the Governors-General and Governors of all the provinces will be bound to issue instructions to all the local officials under their control, directing them to take cognizance minutely of the intention of the Treaties, [and enjoining upon them that] whenever persons provided with passports enter their districts, it is incumbent upon them to take measures effectively, as may be requisite, in conformity with the Treaty provisions. By this means tranquillity will be secured to Chinese and foreigners alike, and causes of misunderstanding will be prevented from arising."

The foregoing, having been reverently received, a copy, reverently made, as also of the Yamên's Memorial, is herewith forwarded for the information of the British Minister.

Kuang-Sü, 1st year, 9th moon, 11th day.

Inclosure 9 in No. 60.

*Extract from the "Peking Gazette" of October 10, 1875.*

THE following Memorial on Foreign Passports was published in the manuscript edition of the "Peking Gazette," of the 10th October:—

"Your Majesty's servants Yi-Sin and others (the Prince of Kung and his colleagues of the Tsung-li Yamên), upon their knees present a Memorial to the Throne. In order to the more perfect exposition of [a provision in] the Treaties with foreign states, they pray your Majesty to issue a Decree directing the provincial Governments to take cognizance thereof; that it may be obediently adhered to, and departure from it avoided.

"They would humbly represent, with reference to the question of foreigners travelling in the interior, that by the express language of the Treaties of the several Treaty Powers, a passport has to be applied for which is sealed by a Chinese authority. Persons holding passports are to produce them for inspection as occasion may demand when they are travelling, and, inspection made, they are to be allowed to proceed, and must not be hindered or detained to their inconvenience. It is farther laid down that where a passport has been lost, or where a passport is not genuine, or where a breach of law is committed [the foreigner concerned], is to be handed over to the nearest Consul, that action may be taken, but that [such a person] is simply to be taken charge of, and is not to be maltreated (or cruelly used). It is farther laid down that passports shall be issued only to respectable persons, or, as in some Treaties it is set forth, that no person not being respectable and of peaceful character is on any account to be given a passport.

"Such are the provisions of the Treaties, which, with slight variations, are, on the whole, identical; their general aim being simply to enable the local authorities to comprehend exactly how the Treaty affects persons carrying passports, and in what manner they are to deal with them under different sets of circumstances.

"In the case of the British interpreter, Margary, who was murdered on the frontier of Yünnan, your servants have had the honour to receive a Decree from your Majesty, directing Li Han-ch'ang to proceed hither, to make inquiry and take action. How it was that he came to be murdered, there will, of course, be no difficulty in establishing. As the water descends, the rock will appear. Meantime, however, while the facts are being ascertained, it is too possible that the authorities in the provinces, not understanding what the Treaty provision really means, may be led by this case to entertain misgivings, each one doubting what course his colleague may pursue (1), and instead of affording protection to persons entitled to it, may abstain from affording such protection for fear of difficulty; or that from the circulation of false statements passed on from one to the other of the common people, some fresh complications may arise. Against either event it is but a duty to take precaution, and it therefore behoves [your servants] to place the truth before the Throne, and to request your Majesty to issue a Decree commanding the high officers in Chihli and the other provinces to transmit orders to the local authorities one and all, to inform themselves without fail of the real meaning of the Treaties, and to take whatever action may be proper under this or that set of circumstances; that so (2) both native and foreigner may be set at ease.

"The Treaties of the different Treaty Powers have earlier been forwarded by your servants' Yamên to the provincial Governments, and if your Majesty now approve (the prayer of their memorial), the Yamên will farther forward to the provinces copies of the articles contained in the several Treaties in which the protection of persons travelling under passport, and other proceedings affecting them, are provided for, with instructions

that orders be passed on to the local authorities to act uniformly in accordance therewith.

"Upon their statement of the reasons why the Treaty provision should be more perfectly explained (or declared), prostrate they beg the sacred glance of their Majesties, the Empresses and the Emperor.

"A respectful memorial."

Inclosure 10 in No. 60.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, October 10, 1875.*

I HAVE the honour to acknowledge your Imperial Highness' communication of the 9th instant, inclosing copies of an Imperial Decree upon the better observance of the Treaty provisions regarding passports, and of the Memorial of the Tsung-li Yamên, requesting that Decree.

I shall have much satisfaction in informing the Earl of Derby that I have received these papers from your Imperial Highness.

In a telegram which reached this on the 6th instant, his Lordship has desired me to repeat that the fullest inquiry into the Yünnan outrage is expected, and I shall be happy to be able to state in reply that Mr. Grosvenor is about to start at once for Yünnan.

I go to Shanghai myself to-morrow to give Mr. Grosvenor his instructions, which will be in sum as follows:—He will, in the first instance, of course proceed to Yünnan-fu, where, I presume, he will find his Excellency Li Han-ch'ang. He will subsequently, as soon as it seems to him good, move on to Manwyne, if for no other purpose, to collect the remains of the unfortunate Mr. Margary. He will then, at his discretion, either return through China to Hankow, or he will cross the frontier to Bhamo, following the line taken by Mr. Margary last January. In the latter case, Mr. Grosvenor will communicate with the Agent of the Government of India resident at Bhamo, and, as in the case of Mr. Margary, a guard will be sent to the Burmese frontier to meet him. Your Imperial Highness has already assured me, in your despatch of the 22nd August, that whenever, at any future date, British officers holding the passports that have been given, shall undertake the journey from Yünnan to Burma, orders shall certainly be given to the authorities on the spot to afford them active protection, enabling them to pass out of [Chinese] territory in peace and safety; and I cannot doubt that all necessary instructions on the subject will have been sent to Yünnan.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

No. 61.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

My Lord,

*Shanghai, October 27, 1875.*

IN the interview with the Grand Secretary Paoyün, alluded to in the foregoing despatch of this date, I took occasion to recommend that, as two months had now elapsed since the Envoys Kuo Sung-tao and Hsü Ch'ien-shên had been appointed, their mission to England had now better be delayed until the Yünnan case was concluded.

The Grand Secretary and his colleagues appeared to acquiesce in the propriety of this course.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

No. 62.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

My Lord,

*Shanghai, October 27, 1875.*

ON my arrival here on the 17th instant, I wrote to the Consul, Mr. Medhurst, instructing him to notify publicly that arrangements had been made that would admit of Mr. Grosvenor's immediate departure for Yünnan. Having learned that great expect-



ations had been entertained of an immediate extension of the privileges of trade from the operations of a Convention I was supposed to have signed, I thought it right to disabuse the community of this impression, and I took occasion to repeat what there is a constant tendency out here to forget, that, with a trade regulated by provisions common to all the Treaties, and defined in nearly identical language in the Treaties, it is not competent for the British Minister any more than for the Minister of any other Treaty-Power, single-handed, to negotiate any conditions that will modify the existent Treaty provisions; or, more exactly, to negotiate conditions that will be operative. Unless it had formally accepted the changes agreed to, any one Power, no matter how insufficient its share of the China trade, would, in most instances, be able to neutralise the effect of any new provision though assented to, it might be, by all the Powers most interested in commerce.

I inclose copy of the despatch which I authorized Mr. Medhurst to publish.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

Inclosure in No. 62.

*Notification.—No. 18 of 1875.*

THE Undersigned has much pleasure in publishing for general information the accompanying copy of a despatch just received from T. F. Wade, Esq., Her Britannic Majesty's Minister Plenipotentiary, &c., &c.

(Signed) W. H. MEDHURST, *Consul.*

*Her Majesty's Consulate, Shanghai, October 17, 1875.*

Sir,

*Shanghai, October 17, 1875.*

I HAVE to request you to state, for the information of Her Majesty's subjects at this port, that arrangements have been made which enable me to allow Mr. Grosvenor to proceed without farther delay to Yunnan, in order that he may be present at the investigation of the circumstances of the attack on Colonel Browne's Mission and the murder of Mr. Margary.

Mr. Grosvenor's long detention, and the fact that I was known to be engaged in negotiations bearing more or less on the matter of his Mission, have not unnaturally excited apprehensions which will, I hope, be set at rest by the announcement I have authorized you to make.

I should not here refer farther to the negotiations in question, did I not conceive it expedient to set speculation on one point at rest. I hear it rumoured that I have signed a Convention by which British Trade was to be materially influenced.—This is not the case; I have availed myself of the opportunity to insist very earnestly upon the duty of more perfectly observing various Treaty provisions, indifference to which has been so frequently matter of complaint; notably of those that bear upon the taxation of our trade. Were the conditions of the Treaty, as it stands, to be fulfilled, there would, of course, be no occasion for a Convention. Were it shown to be expedient to modify the existing conditions of the Treaty affecting trade, a Convention would be, doubtless, necessary. But no Convention could be operative, that had been negotiated by myself, or the Representative of any Treaty-Power, single-handed. Foreign Trade in China is a common property, changes in the regulation of which, to be effective, must have been duly considered and accepted by all alike. What I have striven to obtain, therefore, in this direction, is a formal engagement on the part of the Chinese Government that enquiry should be made into the question of Taxation of Foreign Trade, whether at the Consular Ports or beyond their limits, and that a report should be prepared on which, were it found otherwise impossible to rectify practices at present objected to, modification of existent conditions might be negotiated. An engagement by which I hope that the desired object may be attained has been conceded.

You are at liberty to publish this despatch.

Your obedient servant,

(Signed) THOMAS FRANCIS WADE.

W. H. Medhurst, Esq.,  
&c. &c. &c.

## No. 63.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

My Lord,

Shanghai, October 27, 1875.

ON receipt of your Lordship's reply of the 21st to my telegram of the 18th instant. I wrote to communicate to the Prince of Kung the message I was desired to give him. I have the honour to inclose copy of my note to His Imperial Highness.

I have, &amp;c.

(Signed)

THOMAS FRANCIS WADE.

Inclosure in No. 63.

*Mr. Wade to the Prince of Kung.*

Sir,

Shanghai, October 22, 1875.

I HAVE the honour to acquaint your Imperial Highness that I arrived at this Port on the 17th instant. Upon the 18th I telegraphed to the Earl of Derby that, as I had already reported on the 26th August, a Mission was to be sent by the Chinese Government to England, but that I had recommended the Government not to send it until the inquiry in Yünnan should be ended. I expressed myself in this sense to the Government Secretary Paoyün, and the Minister who did me the honour to call upon me on the 9th instant, and I cannot doubt that they will have repeated what I said to your Imperial Highness.

I had already, on the 8th September informed his Lordship of your Imperial Highness's written promise regarding the safe conduct to and from the Yünnan frontier, of the mission of inquiry I was waiting to despatch, or of a mission from India, should the Government of India see fit to send one. In my telegram I referred to this promise. I added that, on the 28th September, there had been issued an Imperial Decree on the subject of intercourse between Foreign Ministers and the heads of State Departments, which, with the memorial of the Tsung-li Yamên on the same subject, had appeared in the Peking "Gazette." I stated further that Mr. Hart, the Inspector General of Customs, had been instructed to prepare a report upon the taxation of foreign trade, and that a Chinese officer, when the time arrived, would be appointed to confer with an officer of the British Government, in order to the regulation of the trade between Yünnan and British Burma. I added at the same time that I had engaged that no British officer would be sent to Yünnan for the above purpose, until the inquiry, at which Mr. Grosvenor is proceeding to the province to assist, was over. Lastly, I informed his Lordship of the publication of the Memorial and Decree of the 10th instant, upon the passport question, in which allusion was made to the murder of Mr. Margary, and the special appointment of the Governor-General Li, for an investigation into the circumstances of this atrocity. Mr. Grosvenor and his mission would now proceed immediately to Yünnan.

In a telegram received this afternoon, Lord Derby informed me that in claiming what has thus been conceded, my conduct is entirely approved by Her Majesty's Government; that the guarantees agreed to appear to Her Majesty's Government satisfactory, inasmuch as that, if these conditions be faithfully carried out, they will show a willingness on the part of the Imperial Government to atone for the injury done to a friendly power, while they will at the same time insure a better state of relations between England and China for the future.

I am instructed by Lord Derby to communicate the opinion of Her Majesty's Government, as above expressed, to your Imperial Highness. I am further to state that Her Majesty's Government will watch attentively the manner in which the engagements now entered into by the Chinese Government are carried out, and that the re-establishment of a good understanding will depend on the fidelity with which its promises are performed.

I avail, &amp;c.

(Signed)

THOMAS FRANCIS WADE.

## No. 64.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

My Lord,

Shanghai, October 27, 1875.

IN my telegram of the 25th instant, I informed your Lordship that I had attached Mr. Davenport to Mr. Grosvenor's Mission. I have the honour to inclose copy of my



instructions to Mr. Davenport. He is one of the few members of the service who have studied law *con amore*, and I believe that, in the work of collecting and examining evidence, his experience as Assessor of the Mixed Court at this port will make him specially useful. I had originally contemplated putting a Consular Officer at the head of the Mission to Yunnan, and Mr. Davenport was the officer I should have selected. I changed my purpose only because I thought the duty one which should properly devolve upon a Secretary of Legation, especially a Legation with so strong a Diplomatic staff as my own.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

P.S.—Mr. Davenport has had but a week to get ready, and it is due to him to state that no one could have lost less time in making preparation for so long a journey.

T. F. W.

Inclosure in No. 64.

*Mr. Wade to Mr. Davenport.*

Sir,

*Shanghai, October 22, 1875.*

IT is my desire that you should proceed at once to Yunnan, as a member of the Mission which, as you are aware, is about to start for that province, for the purpose of being present at an investigation of the circumstances attendant on the attack on Colonel Browne's party, and the murder of Mr. Margary last February. The head of the Mission, as you are also aware, is the Honourable Thomas Grosvenor, Second Secretary of Legation. The chief authority in all matters is vested in Mr. Grosvenor, who is accompanied by Mr. Baber, a very competent interpreter. I have decided on attaching you to his mission, for reasons which I shall state below.

From the reports supplied to the Government of India, and embodied in a despatch from me to the Prince of Kung, copy of which is in Mr. Grosvenor's hands, there is the strongest reason for inferring that the attack on Colonel Browne's Mission was deliberately planned and carried out by Chinese officials. The murder of Mr. Margary was to all appearance but a part of the outrage contemplated. It will be Mr. Grosvenor's charge to trace home both these acts to their instigators and perpetrators,—a task of great difficulty. It may too possibly happen that the conduct of the inquiry, in what we should consider judicial form, will prove impracticable; but, be this as it may, it has occurred to me that both in the collection and examination of evidence, on which, whether it be produced in Court or not, conclusions more or less judicial in character will have to be based, your experience as Assessor in the Mixed Court here, your acquaintance with law, and your knowledge of Chinese, may make your assistance valuable to Mr. Grosvenor. He, I repeat, must be regarded as the head of the mission; and should he have need of your services otherwise than in the direction above indicated, I feel confident that they will be freely rendered.

Regarding your expenses or other details, I beg to refer you to Mr. Grosvenor, my instructions to whom on all points must also be your guide.

(Signed) THOMAS FRANCIS WADE.

No. 65.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

My Lord,

*Shanghai, October 27, 1875.*

MR. GROSVENOR, as my telegram of the 25th instant will have informed your Lordship, started for Hankow upon the 24th. By the time his preparations are complete, Mr. Davenport will have joined him.

I have the honour to inclose copy of my instructions to Mr. Grosvenor, and of a note I have addressed to the High Commissioner Li, which Mr. Grosvenor will deliver to his Excellency.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

## Inclosure 1 in No. 65.

*Mr. Wade to Mr. Grosvenor.*

(Extract.)

*Shanghai, October 23, 1875.*

THE difficulties that had delayed the departure of your mission to Yunnan having been removed, I am enabled at last to give you your final instructions.

In the first place, I have decided to reinforce your staff by the addition of Mr. Davenport, Vice-Consul at this port. As Assessor of the Mixed Court here, Mr. Davenport has been long associated with the Chinese Magistrate Chên, who, as you are aware, has been attached to the High Commissioner Li Han-chang, for the purpose of assisting him in the inquiry which you are deputed to watch. The Magistrate Chên is a man of limited capacity, but, his antecedents considered, I incline to view his appointment favourably rather than otherwise. In any case, Mr. Davenport's long acquaintance with him will be useful, while his experience as Assessor, his conversance with law, and his knowledge of the language, will make him a valuable coadjutor. I have, at the same time, as I have stated in my letter of instructions to him, every confidence that, should you have need of his services otherwise than in the direction indicated, they will be cheerfully rendered.

It is not in my power to assign either Mr. Davenport or Mr. Baber a higher rate of salary than they are now receiving. It will rest entirely with the Secretary of State to decide hereafter, whether, while employed in the special service in which they are engaged, special emoluments are to be allowed them. The expenses of all attached to the mission—officers, Chinese employés and servants—will be charged by you against a fund which I have placed in the hands of Mr. Medhurst, Her Majesty's Consul at this port. He has been authorized to draw for the use of your mission the sum of 10,000 dollars.

The Chinese writer who goes with Mr. Baber and the servants of the mission will be paid the wages laid down in the Memorandum appended.

I append also a Memorandum of papers in English and Chinese selected from correspondence relating to the Yunnan outrage, with other documents that may prove useful to you. You will also have with you fifty copies of the Treaty. I wish you to give these away to officials or lettered men, especially to those inhabiting out-of-the-way places. Many of these are ignorant of the very existence of the Treaties. You will find opportunities, I do not doubt, for attracting attention to the fact that Treaties do exist, and of presenting copies of ours, undemonstratively, to those who wish to receive them.

Amongst the papers selected is a Memorandum of my instructions of the 7th August, 1874, to Mr. Margary, which, although the circumstances of your mission are different, it may be of some advantage to consider.

As to the line you are to take, I approve your selection of the Chung-küing route, the more that your Chinese companion, Sung Pa-hua, has arranged that another mandarin is to meet you at Kuei-chou Fu. You will spare no pains, I am satisfied, to reach the provincial capital of Yunnan with the least possible loss of time.

On your arrival there, you will, of course, put yourself in communication with the High Commissioner Li. I inclose a letter to him, the English text of which has been added to the papers before adverted to. According to the Grand Secretary Li, you will remember, the brother mandarin Li hsieh-t'ai has been for some time under arrest at Yunnan Fu. It is to be expected, also, that other arrests will have been made, and that some person or persons will be ready for production as having been concerned in the murder of Mr. Margary. The character of the attack on Colonel Browne's party will probably be disputed. Notwithstanding all that has been stated in my despatch of the 20th August to the Prince of Kung, which, in effect, will be your brief, you must be prepared for a repetition of one or other version of the story that has been put forward at Peking—such as that the assailants were savages, whose cupidity was excited, or simple people who knew no better, or rebels disguised as Government troops. The Grand Secretary Li, you will recollect, contends that they were *tuan lien* militia, or train-band men. This it is not impossible that they were, and were the fact established, the responsibility of some authority or other would scarcely be less than if they had been regulars of the provincial army. The irregularity of the force at the same time would in no way discredit the statements contained in the letters of the Burmese official cotton agents, which are the most important evidence implicating the Chinese Government.

You will do well to keep yourself in reserve, and to allow Messrs. Davenport and



Baber to attend at the trial or examination of the Chinese. The High Commissioner will certainly not take more than a formal part in the proceedings, and this, probably, at their close. If convictions be obtained, Mr. Baber should be deputed to see any sentence, such as of death or corporal punishment, which you may accept at first, carried into effect. No sentence to summary punishment will be passed, you may be sure, upon an official, should any be arraigned. If none be, you must be guided by your opinion of the evidence collected as to whether you should claim the examination of any.

Before Chinese law, the Tsung-ping and the T'ung-pan of Momein in office in February last, are guilty, if of nothing worse, at least of not having prevented the attack on Colonel Browne's party. The High Commissioner will, of course, have received their written reports, and copies of these, for form's sake, you should demand, and as matter essential to the preparation of your report of the case.

In either case, whether the proceedings so terminate as to justify your declaring yourself satisfied, or whether you find yourself obliged to protest against them as unsatisfactory, you will claim fulfilment of the Prince of Kung's promise that you shall be escorted to the frontier. You will take the Manwyne route, halting in Manwyne to collect Mr. Margary's remains. You will, of course, avail yourself of the opportunity to learn what you can, and as soon as the Government of India's Agent at Bhamo can send an escort for you, you will proceed to Bhamo, and thence to Rangoon.

I hope that you will be able to open communications with the Agent at Bhamo from Yünnan Fu. You will request him to cause anything of importance to be telegraphed to me from Mandalay. You will telegraph to me from Mandalay the result of your mission, and await my reply either there or at Rangoon.

As regards your staff, I leave you a discretion. Mr. Davenport and Mr. Baber should both accompany you to Manwyne; but I leave it to you then to decide whether either or both shall proceed with you to Rangoon, or return through China, and if the latter, whether the return route shall be by Chungkiang, by Knei Chou and Hu Nan, or by Nanning Fu and Kuang Si.

The year will be well on before your work is done, and it may be too late for the long land journey through China. Whatever may be your decision, I wish you not to lose sight of the object of the Government of India in sending the Mission last year. It was a Mission of exploration, and as far as it may be possible it will be the duty of all of you to collect information, and this is the one reason why I should be glad if Mr. Davenport and Mr. Baber would return overland.

I shall hope to hear from you as frequently as possible. With the aid of Sung Pao-hua the transmission of letters should be unattended with difficulty.

Lastly, I have to request that a journal be kept of all occurrences, from the day you leave Hankow, the names of persons being always written when they are first mentioned in Chinese character.

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Inclosure 2 in No. 65.

*Mr. Wade to the Imperial Commissioner Li Han ch'ang.*

October 23, 1875.

MR. WADE presents his compliments to the Imperial Commissioner Li Han chang.

This note will be delivered to his Excellency by Mr. Grosvenor, Second Secretary of Legation, who, as his Excellency is aware, has been selected by Mr. Wade to be present at the inquiry which the Chinese Government has promised should be instituted into the circumstances connected with the attack on a Mission from the Government of India, travelling under passports in Yünnan, last February, and the murder of Mr. Margary, the interpreter, who had been sent by Mr. Wade to meet the Mission in question.

In reparation of this outrage, Her Britannic Majesty's Government demands the punishment of those who instigated and took part in it, and it is to the establishment of the truth that, according to an Imperial Decree dated the 9th instant, his Excellency Li has received a special Commission.

In a telegram which reached Mr. Wade on the 6th instant, the Earl of Derby, Principal Secretary of State for Foreign Affairs, instructed Mr. Wade to repeat that the fullest inquiry into the circumstances of the Yünnan outrage is looked for; and in

a second telegram received by Mr. Wade on the 22nd, he is again desired to state that Her Majesty's Government will watch with attention the manner in which the promises given by the Chinese Government, in evidence of its good faith, are performed, and that the re-establishment of a good understanding will depend on the fidelity with which the engagements of the Chinese Government are observed. The engagements referred to are those negotiations of which with the Tsung-li Yamén has occupied Mr. Wade for the last two months, the end of all being to ensure that the circumstances of the crime of February last shall be duly investigated, and the persons responsible punished. It is to prevent all after question upon this point that Mr. Grosvenor is sent to Yünnan. It is essential for the satisfaction of Her Majesty's Government that there should be no doubt as to the identity of persons who may be brought to trial, or the credit of statements that may be made either for the prosecution or the defence.

Mr. Wade has informed the Prince of Kung that Mr. Grosvenor will proceed in the first instance to the provincial capital, Yünnan Fu, to place himself in communication with his Excellency Li. As to the time he may remain there Mr. Grosvenor will be authorized to use his discretion. The length of his stay will be regulated by circumstances.

The Prince has been further informed that when he decides on leaving Yünnan Fu, Mr. Grosvenor will move on to Manwyne, if for no other purpose, to collect the remains of Mr. Margary, who was murdered in or near that town. Mr. Grosvenor will then, as he sees fit, either return through China to Hankow, or he will cross the frontier to Bhamo, following the line taken by Mr. Margary in January.

In a despatch dated the 22nd August, the Prince of Kung has promised that, whenever a British officer holding passports shall undertake the journey from Yünnan to Burma, orders shall certainly be given to the authorities on the spot to afford him protection. Mr. Grosvenor is supplied with a copy of the Prince's despatch referred to, and if he decides to return by Bhamo, he will apply to his Excellency Li to take the necessary steps. He will, at the same time, communicate with the Agent of the Indian Government who is stationed at that place; and, as in the case of Mr. Margary, the Agent will see that a guard be sent to the Burmese frontier to escort him and those with him to Bhamo.

Mr. Wade cannot too strongly impress upon his Excellency Li the necessity of assisting Mr. Grosvenor to accomplish his mission in every particular.

The crime committed in Yünnan has naturally excited the indignation of Her Majesty's Government and subjects, and a suspicion that, either in the conduct of the investigation or in his subsequent movements, Mr. Grosvenor had not received from his Excellency the assistance which, from the nature of this mission, he is entitled to look for, would hardly fail to be productive of the gravest consequences.

Mr. Grosvenor will be accompanied by Mr. Davenport, Vice-Consul of Shanghai, and by Mr. Baber, an Interpreter of the Consular Service. These gentlemen will proceed with Mr. Grosvenor to Burma or return through China as he may see fit to direct.

#### No. 66.]

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

(Extract.)

*Shanghai, October 27, 1875.*

IT would be a serious omission on my part were I to close the long series of papers that I am forwarding to your Lordship by this mail, and not to record my sense of the great service rendered me by Mr. Hart, the Inspector-General of Customs, during the latter part of the discussion happily terminated by the Prince of Kung's concession of what I had asked for.

I am bound to say that I have known no instance in which he has felt such or such a course to be to the advantage of the common interest of China and foreign nations that he has not urged its adoption upon the Tsung-li Yamén. Such progress as China is making is due, doubtless, to a combination of causes, but among foreigners I do not hesitate to say that no one has individually contributed to her advancement in the same proportion as Mr. Hart.



## No. 67.

*Mr. Wade to the Earl of Derby.—(Received December 12.)*

(Extract.)

*Shanghai, October 28, 1875.*

I HAVE decided on sending home Mr. Edwardes with the voluminous correspondence now forwarded to your Lordship. Mr. Edwardes has been with me throughout the somewhat stormy discussion in which I have been engaged for the two months preceding my departure from Peking, and I cannot doubt that on many points the explanations of an eye-witness will be found useful.

## No. 68.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, December 15, 1875.*

I APPROVE the note of which a copy is inclosed in your despatch of the 21st of October,\* which you addressed to Prince Kung on the 27th of September, relative to a report which had reached you that the people of Yünnan were being excited against Mr. Grosvenor's Mission.

I am, &c.  
(Signed) DERBY.

## No. 69.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, December 15, 1875.*

I APPROVE of your having recommended the postponement of the Chinese Mission to this country until after the conclusion of the Yünnan inquiry, as reported in your despatch of the 27th October.†

I am, &c.  
(Signed) DERBY.

## No. 70.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, December 15, 1875.*

I APPROVE the despatch, of which a copy is inclosed in your despatch of the 27th of October,‡ which you addressed to Mr. Medhurst on the 17th of that month, authorizing him to notify publicly that arrangements had been made that would admit of the departure of Mr. Grosvenor's Mission to Yünnan.

I am, &c.  
(Signed) DERBY.

## No. 71.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, December 15, 1875.*

I APPROVE the note, of which a copy is inclosed in your despatch of the 27th of October,\* which you addressed to Prince Kung on the 22nd of the same month, communicating to His Highness the substance of my telegram of that date.

I am, &c.  
(Signed) DERBY

\* No. 55.

† No. 61.

‡ No. 62.

§ No. 63.

No. 72.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, December 15, 1875.*

I APPROVE of your having attached Mr. Davenport to Mr. Grosvenor's Mission to Yünnan, as reported in your despatch of the 27th of October.\*

I am, &c.  
(Signed) DERBY.

No. 73.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, December 15, 1875.*

I HAVE had under my consideration your despatch of the 27th of October,† forwarding a copy of the instructions with which you furnished Mr. Grosvenor for his guidance during his mission to Yünnan, and of a note addressed by you to the High Commissioner Li Han Chang; and I have to express to you my entire approval of these papers.

I am, &c.  
(Signed) DERBY.

No. 74.

*Consul Medhurst to the Earl of Derby.—(Received December 18.)*

(Telegraphic.)

*Shanghai, December 15, 1875.*

ADVICES from Grosvenor dated December had reached I-chang-fu. To proceed on 2nd. All well.

No. 75.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, December 23, 1875.*

I HAVE received your despatch of the 27th of October,‡ calling attention to the services rendered to you by Mr. Hart, the Inspector-General of Customs at Peking, during your discussions with the Chinese Government in regard to the Yünnan affair, and I have to request you to inform Mr. Hart that Her Majesty's Government highly appreciate the assistance given by him towards the maintenance of friendly relations between Great Britain and China.

I am, &c.  
(Signed) DERBY.

No. 76.

*Consul Alabaster to the Earl of Derby.—(Received December 27.)*

My Lord,

*Hankow, November 6, 1875.*

I HAVE the honour to forward herewith a copy of a despatch which I have addressed to Her Majesty's Minister at Peking, reporting the departure from Hankow of the Honourable Mr. Grosvenor's Mission to Yünnan.

I have, &c.  
(Signed) C. ALABASTER.

\* No. 64.

† No. 65.

‡ No. 66.



Inclosure in No. 76.

*Consul Alabaster to Mr. Wade.*

Sir, *Hankow, November 5, 1875.*  
I HAVE the honour to report the departure of Mr. Grosvenor's Mission this morning at 10 A.M.

They are accompanied by two native gun-boats, and a special officer has been directed to see them to the limits of the Province.

Everybody left in good health, and with every prospect of a pleasant voyage, at least as far as Ichang.

I have, &c.  
(Signed) C. ALABASTER.

No. 77.

*The Earl of Derby to Sir T. Wade.*

Sir, *Foreign Office, January 1, 1876.*  
MR. EDWARDES arrived in London on the 12th of December, and delivered to me your despatches of the 20th to the 28th October.

You will have received by the last mail my observations on the subjects referred to in several of them, but those which contained a detailed account of your negotiations on the Yünnan affair have required more deliberate consideration.

I have now to inform you that your proceedings are approved by Her Majesty's Government, who trust that the concessions which you have obtained will not only secure a full and searching inquiry into the attack on Colonel Browne's mission and the murder of Mr. Margary, but will also lead to an improvement of the relations between Great Britain and China.

Her Majesty's Government, in their anxiety not to press too hardly on the Chinese Government or endanger its stability, have, in many instances, abstained from insisting on the full satisfaction of their claims, and although possessing the means of enforcing them to the fullest extent, have forborne from using those means in the hope that the Government of China would gradually awake to a clear sense of its duties towards foreign powers.

This hope has not hitherto been realized, and you have found it necessary, in dealing with the serious question recently under discussion, to demand certain guarantees, which are duly recorded in the notes and decrees inclosed in your despatches.

The treatment on a proper footing of the Ministers of friendly Powers, the representation of China in this and other foreign countries, the proper protection of foreigners travelling in China, the execution of the Treaty stipulations in regard to trade and other matters, the establishment of commercial relations between India and Western China, are all subjects to which Her Majesty's Government attach great importance, and they have learnt with satisfaction the assurances which have been given to you on these points.

Her Majesty's Government are animated by the most friendly feelings towards the Government and people of China, and have every wish that the relations between the two countries should be of an amicable and peaceful character; but in order that this wish may be realized, there must be evidence of a similar disposition on the part of the Chinese Government, and this disposition they can best show by prosecuting with vigour and earnestness the investigation in Yünnan, and the eventual punishment of the perpetrators of the outrage, and by carrying out the other engagements which they have now taken in a straightforward and friendly spirit.

I am, &c.  
(Signed) DERBY.

No. 78.

*Mr. Wade to the Earl of Derby.—(Received January 2, 1876.)*

My Lord, *Shanghai, November 17, 1875.*  
I HAVE the honour to forward your Lordship copy of the instructions I have addressed Her Majesty's Consul at this port, regarding communication of such intelligence as he may receive of the progress of Mr. Grosvenor's Mission to Yünnan.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

## Inclosure in No. 78.

*Mr. Wade to Consul Medhurst.*

Sir,

*Shanghai, November 17, 1875.*

YOU will receive from time to time intimation of the progress of Mr. Grosvenor's Mission to Yunnan. On receipt of such intimation, no matter from what member of the Mission, or by what channel, so long as you are assured of its authenticity, you will be so good as to telegraph to the Foreign Office and to the Viceroy of India to the effect that on such a date the members of the Mission were well, and that things were going on to their satisfaction, or otherwise, according to the report you receive.

Considering the confusion generally attending the attempt to transmit Chinese names even in written correspondence, I think it desirable to avoid their use in telegrams as much as possible. So far as places go, it will be sufficient to mention Chung Kiang on the Great River, and to note the entry of the Mission into the Province of Yunnan, its arrival at Yunnan Foo, as the capital of the Province, and its departure thence when it moves west. After that you may venture, I think, to name Ta-li Foo, Momein (or T'êng Yueh T'ing), and Manwyne. It is more than probable that, even from Yunnan Foo, the Mission will be enabled to communicate with Bhamo. You will always report whatever news you may receive, in writing, to myself, the Viceroy of India, and the Under Secretary of State.

At this port, I wish you to make public the dates of the arrival of the Mission at this place or that, and any particulars you may receive regarding the health of its members, but their proceedings as a Mission must not be published except with my sanction.

The expense of these telegrams you will charge against the fund placed in your hands on account of the Mission to Yunnan.

I have, &amp;c.

(Signed) THOMAS FRANCIS WADE.

No. 79.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, January 8, 1876.*

I HAVE received your despatch of the 17th of November,\* transmitting a copy of the instructions addressed by you to Her Majesty's Consul at Shanghai relative to the communication of any intelligence which he may receive of the progress of Mr. Grosvenor's Mission to Yunnan, and I have to convey to you my approval of the same.

I am, &amp;c.

(Signed) DERBY.

No. 80.

*Consul Medhurst to the Earl of Derby.—(Received January 13.)*

(Telegraphic.)

*Shanghai, January 12, 1876, 3.20 P.M.*

ADVICES from Grosvenor, dated 13th December. Had reached Kwei-Chau-Foo. All well.



CHINA. No. 4 (1876).

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FURTHER CORRESPONDENCE

RESPECTING THE

ATTACK

ON THE

INDIAN EXPEDITION TO WESTERN CHINA,

AND THE

MURDER OF MR. MARGARY.

(In continuation of C. 1422, presented April 1876.)

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*Presented to both Houses of Parliament by Command of Her Majesty.*  
1876.

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Further Correspondence respecting the Attack on the Indian Expedition to Western China, and the Murder of Mr. Margary.

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No. 1.

*Consul Medhurst to the Earl of Derby.—(Received January 17.)*

(Telegraphic.)

*Shanghai, January 17, 1876.*

GROSVENOR party arrived at Chung King 30th December. Will leave again 3rd January. All well.

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No. 2.

*Lord Tenterden to the Secretary to the Admiralty.*

Sir,

*Foreign Office, January 27, 1876.*

WITH reference to my letter of the 18th instant, I am directed by the Earl of Derby to state to you, for the information of the Lords Commissioners of the Admiralty, that a telegram has been received from Her Majesty's Minister at Peking, suggesting, with reference to the negotiations which he is conducting with the Chinese Government, relative to the Yünnan outrage, the strong reinforcement of the naval forces on the China station. Sir T. Wade appears to consider that a demonstration of physical force will strengthen his hands materially in the present posture of affairs, and I am therefore to request that in laying this letter before the Lords Commissioners of the Admiralty you will move their Lordships to favour Lord Derby with their opinion as to the feasibility of complying with Sir T. Wade's request, and with any observations which may occur to them in regard to it.

I am, &c.

(Signed) TENTERDEN.

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No. 3.

*Consul Medhurst to the Earl of Derby.—(Received January 31, 1876.)*

My Lord,

*Shanghai, December 15, 1875.*

HAVING been instructed by Her Majesty's Minister to keep your Lordship informed, both by telegram and letter, of the progress made by the mission to Yünnan under the Honourable T. G. Grosvenor, I have the honour to submit the accompanying précis of two journals received from Mr. Grosvenor, covering the period between the 17th November and the 1st December.

I have, &c.

(Signed) W. H. MEDHURST.

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## Inclosure in No. 3.

*Extracts from Mr. Grosvenor's Private Journal.*

On the 17th November arrived at Tiao Kuan, 235 miles by river from Hankow. Up to the present everything has favoured our passage, and nothing can exceed the attention shown us by our escort, which consists of Sung pao hua, Liu (official deputy from Hankow), and two Chinese gun boats. After twelve days of most prosperous journey, we are wind-bound in the most desolate corner of Yangtsze. This is our first check. Our course from Hankow has led us through a flat uninteresting country, some of which is evidently flooded in summer; but the greater part is under cultivation, growing much the same grain and plants as the North of China, some of the second crop (buckwheat chiefly) being gathered in at this moment. About three days since our scenery improved as we wound round a range of not very high hills; but we have left even that cheering prospect now, and shall not meet with anything more of interest till we get to the neighbourhood of I-Chang, when our scenery becomes very grand, if one is to trust previous chartists and explorers. The river still continues grand in its proportions, being more than half-a-mile wide even up here. Its waters still remain as yellow as ever, but by dint of alum and filtering, we get clean water to wash in and drink. Once past the opening of the Tung Ting Lake, the water way has a deserted look, for all the trading junks take to the lake by preference; but we have determined to cast ourselves on the Yangtsze as a means of transport, as we want to get a glimpse of Ssu-ch'uan on our way to Yunnan.

November 18 finds us on our way again. We tracked slowly all the morning up the northern reach, and since then, as the river bends in a westerly direction, the wind has become favourable, and we are sailing away at a good rate.

November 24th. We have this day reached Sha-shih (sand mart), the great depôt for Ssu-ch'uan junks. It is at this spot that goods are loaded for the more eastern and southern districts. We saw junks made fast to the shore uninterruptedly for nearly two miles around Sha-shih. As soon as we reached this place we made for a pagoda about half-a-mile further up stream, climbed up the inside, and took the best view we could of the surrounding country. The people were wonderfully civil and quiet. I was amazed at the way in which they submitted to being bullied by the Yamên runners, who accompanied us on our stroll.

We left Sha-shih on the morning of the 26th November under escort; a fresh gun-boat detached from thence to attend us as far as S-chang, one of the former gun-boats being sent on to prepare the way and hire boats for us at S-chang. We got into hilly country on the 27th November, when the weather became overcast. On the 28th it rained nearly all day. The crew were rather unwilling to work in the rain, but a little gentle pressure set them to work again, and we managed to make a little progress. It cleared up in the evening, and next day we had a most glorious bright sunshine, which enabled us to enjoy thoroughly the splendid scenery we now found ourselves in the midst of. The wind favoured us, and we made a very good day's journey.

On the 30th we took a day's ramble among the hills on the right bank. We walked till 5 P.M., when we returned to our boats, which had kept pace with us. Towards 8 P.M. it clouded over, and rained till noon December 1. Our last night's resting place was, however, sufficiently near to S-chang to induce the boatmen to forget the rain, and at noon we reached this spot, which is a tolerable centre of junk trade, though by no means so large as Sha-shih.

After breakfast we went on board the new junks destined to carry us to Chung-Ching. We shall now have to divide our forces. Davenport and I take the most roomy junk, and Baber and the linguist take a rather smaller one. When we had completed our inspection we visited the town. The crowd was very eager to see us, but protected as we were by any amount of Yamên runners and gun-boat men, a space was cleared for our progress. We walked round the walls of the town, which we estimated at two miles in circumference. The wall is not square but rather semi-circular, except where it fronts the river and follows a tolerably straight line. When we had walked round the walls we descended into the interior of the town and walked through its principal streets. We passed many well-to-do shops, and some were stocked with foreign piece goods. The inhabitants in some of the streets had a prosperous, well-conditioned air about them, and some of the hong and buildings we went by were well-built and tolerably clean looking. There was so much building outside the wall that it was difficult to get a good view from it, but to all appearance the surrounding country on the left bank of the river is one mass of graves, and this being the only level ground in the neighbourhood, I do not quite see where a foreign Settlement is to grow up.



I have asked for a Lekin table, similar to the one furnished at Sha-shih. It will be useful for comparison if obtainable.

The characteristics of the river and its surrounding hills and plains are so well described in Blakiston and T. T. Cooper's books on the subject that there is nothing left to add on this head.

I have received cards from several small officials, and the Chih-hsien has sent me some things to eat, of which I accepted a pair of fowls, and sent the rest back with the usual fee.

The Senior Naval Officer of the place sent me his card in such grotesquely large characters that I sent it back to him, and told him he should have mine when he sent a proper card, which in the course of a quarter of an hour he did.

I hope to get on my way to the first Rapid to-morrow at noon, and intend sending these letters down by our former escort, which is to be relieved here by two fresh gun-boats, and to return at once to Hankow. We are all well and cheerful, very much the better for our yesterday's hilly ramble.

(Signed) T. G. GROSVENOR.

*S-chang Fu, December 1, 1875.*

No. 4.

*The Secretary to the Admiralty to Lord Tenterden.—(Received February 2.)*

(Extract.)

*Admiralty, January 31, 1876.*

WITH reference to your letter of the 27th instant, relative to the state of affairs in China, and to the remarks of Her Majesty's Minister at Peking respecting the strength of Her Majesty's fleet in those waters, I am commanded by my Lords Commissioners of the Admiralty to request you will inform the Earl of Derby that there are five frigates (forming part of the detached squadron) now at Bombay, which could proceed to the China Station, if Her Majesty's Government are of opinion that circumstances are of sufficient importance to require their being despatched thither; but these ships are at present under orders to proceed to England to refit, and have new boilers; and their Lordships are of opinion that it would be undesirable to forego this intention, except in case of urgency.

No. 5.

*Mr. Lister to the Secretary to the Admiralty.*

(Extract.)

*Foreign Office, February 3, 1876.*

I AM to state to you, for the information of the Lords Commissioners of the Admiralty, that since the date of Lord Tenterden's letter of the 27th ultimo, a further telegram has been received from Her Majesty's Minister at Peking reiterating his opinion that means of coercion should be at hand in the event of his negotiations with the Chinese Government taking an unfavourable turn, and I am, under these circumstances, to request that in laying this letter before their Lordships you will state to them that Lord Derby considers that in view of the renewed representations of Sir Thomas Wade, immediate steps should be taken to despatch reinforcements to the China seas, so as to convince the Chinese Government that Her Majesty's Government are determined to exact due reparation for the outrage committed in Yünnan.

No. 6.

*The Secretary to the Admiralty to Mr. Lister.—(Received February 5.)*

Sir,

*Admiralty, February 4, 1876.*

WITH reference to your letter of yesterday's date, in regard to the advisability of increasing the naval force in China, I am commanded by my Lords Commissioners of the Admiralty to request you will inform the Earl of Derby that orders have been sent by telegraph to Bombay for Rear-Admiral Lambert to proceed to Hong Kong with the four frigates "Narcissus," "Newcastle," "Topaze," and "Immortalité," after completing the ships with stores and provisions.

2. The Rear-Admiral has also been directed to call at Singapore, and report his arrival there by telegraph, awaiting further orders.

I am, &c.  
(Signed) ROBERT HALL.

No. 7.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, February 9, 1876.*

I REFERRED to the Lords Commissioners of the Admiralty your telegrams of the 5th and 16th ultimo, suggesting, with reference to the present state of your negotiations with the Chinese Government, the advisability of reinforcing the British naval force in China waters, and I have now to inform you that their Lordships have sent orders by telegraph to Bombay for Rear-Admiral Lambert to proceed to Hong Kong with the four frigates "Narcissus," "Newcastle," "Topaze," and "Immortalité," after completing the ships with stores and provisions. The Rear-Admiral has also been directed to call at Singapore and report his arrival there by telegraph, awaiting further orders.

I am, &c.  
(Signed) DERBY.

No. 8.

*Sir T. Wade to the Earl of Derby.—(Received February 10.)*

(Telegraphic.)

*Peking, January 26, 1876.*

A FURTHER Memorial and Decree have appeared in the "Peking Gazette" on the subject of the Momein outrage. The former allegation that bad characters murdered our Interpreter is repeated by High Commissioners; but they state that there is ground for supposing that Li Sieh Tai took part in the opposition to the entry of foreigners; but that Li did not assist at the murder, and that no soldiers were implicated.

By Decree Li is degraded and put on his trial.

No. 9.

*Sir T. Wade to the Earl of Derby.—(Received March 1.)*

(Telegraphic.)

*Peking February 16, 1876.*

A POLITE letter from High Commissioner Li, dated the 29th ultimo, was received by me yesterday.

He professes to have caught the actual culprits; but he engages that, according to my demand, before the infliction of any punishment, reports on both sides shall be taken into consideration by me with the Yamên.

My Secretary was shortly expected by him.

On the return of the Secretary, he was to be escorted safely by whatever route he might select out of the Province.

No. 10.

*Mr. Wade to the Earl of Derby.—(Received February 27, 1876.)*

(Extract.)

*Peking, December 15, 1875.*

AS my telegram will have informed your Lordship, on my arrival at Tien-tsin I had had two interviews with the Grand Secretary Li. I called on him on the 23rd November, and he returned the call on the 24th. The Envoys designate, Kuo and Hsü, were with his Excellency when I met him at his Yamên. The first left Tien-tsin for Peking the day after my visit. The second accompanied the Grand Secretary to the Consulate, and paid me a separate visit on the 24th.

His object was to exonerate Ts'ên, the Acting Governor-General of Yünnan and Kuei-chow, of all but the formal blame attaching to a provincial Governor before



Chinese law when something has gone wrong in his province, whether he could have prevented it or not; and he hinted that a loss of three steps, without dismissal from his post, was the kind of penalty to which the Acting Governor-General might be liable.

I told him that, with all the circumstances known to us, we should require to have it shown that no part of the mischief done was due to his Excellency Ts'ên's orders. He admitted that if orders had been given which led to the death of Mr. Margary, Ts'ên would undoubtedly deserve death; but he was confident that no such orders had been given. At the same time he professed absolute ignorance of the facts established by the provincial Government, without knowledge of which, I had continued to repeat, it would not be possible for me to say what degree of reparation we might decide on claiming. If I knew the precise truth, I had said, it might be possible that no life need be taken; because, according to our civilization, what we seek in punishment is not retribution, but prevention of crime.

This was the sum of what passed between us in our two interviews upon the subject of punishment. I urged, however, that whatever might be the upshot of the inquiry Mr. Grosvenor had been despatched to institute, the public, not of England alone, might be propitiated if the Chinese Government were to proceed spontaneously to perform the promises given to me last September. I did not propose myself to return to the charge, I said, except as regarded the Yünnan case, pure and simple.

The Grand Secretary Li said that the promise given regarding taxation of trade was being fulfilled, as Mr. Hart was engaged in preparing the Report the Tsung-li Yamên had directed him to make; but that in the matter of intercourse between Ministers of the Yamên and foreign Representatives he was sure no step would be taken unless it was suggested from without.

No. 11.

*Mr. Wade to the Earl of Derby.—Received February 27, 1876.)*

My Lord,

*Peking, December 15, 1875.*

TO resume the thread of my narrative, I have the honour to state that I reached Peking on the 29th November, and the first few days had been passed, as is usual in interchange of formal visits, when, to my astonishment, there appeared in the "Peking Gazette" of the 9th instant, a Decree acknowledging the "Memorial of Li Han-ch'ang and colleagues," reporting what seemed at first sight to be the conclusion of an inquiry into the Yünnan affair.

The Grand Secretary Li had assured me that his brother would not reach the capital of the Province until about 18th November, and that couriers took about twenty days to perform the journey thence to Peking.

Having first dispatched two notes which I had had it in contemplation to send,—the one correcting certain errors of statement on my part, to which I shall refer elsewhere, the other requesting attention to reports received from India of the barbarous treatment of persons arrested at Momein, which I beg to inclose,—I wrote a third to inquire whether the Decree were authentic; if it were, to request that the Memorial of his Excellency Li might be sent me, and that I might be informed who the colleague or colleagues were, that were referred to in the Decree. I inclose also copy of this note.

I received the same day (the 10th instant) a note from the Prince of Kung, which may have crossed mine to His Imperial Highness, inclosing copies of Memorial and Decree. I inclose translation of the note and its inclosures, the authenticity of which was thus thoroughly vouched for, while the Memorial showed that one colleague at least, Sieh Huan by name, had been added to the Commission so far back as the 7th September.

Sieh Huan was Taotai at Shanghae in 1856-58, later still Treasurer and Acting Governor of Kiang Su, and from 1863 to 1868 a Minister in the Tsung-li Yamên. His unpopularity with his colleagues led to his retirement to Ssu Ch'uan, his native Province, ostensibly to take care of his aged parents, and he has hardly since been heard of. He was notoriously anti-foreign, and has been sent to Yünnan, I am satisfied, simply for the purpose of being obstructive.

Of course, this conviction did not entitle me to protest against his employment, if his Government saw fit to employ him, but I felt bound to express my surprise at the concealment of his nomination, and at the association with the Commission of the Acting Governor-General Ts'ên, whose name figured at the head of the published copy of the Memorial; also at the extraordinary despatch with which the Commission had arrived at the decision as to facts submitted to the Throne. There were also some errors of state-

ment in the Memorial, which was, in effect, but a reproduction of the story originally told by the officials who, according to the Prince of Kung's note of the 31st July, had been sent to Manwyne to make investigation. There was a slight difference between the two reports, it is true. The averment that the attack on Colonel Browne and the murder of Mr. Margary were the acts of the savages is in part retained. It is added that the savages were leagued with outlaws, and that both took advantage of the excitement occasioned in the Momein country by the rumour that we were bringing in troops, and the consequent levy of a volunteer force.

I tendered my criticisms accordingly in another note upon the 12th instant. Copy is inclosed.

The Prince of Kung replied on the 13th, in a note, of which I inclose translation. His Imperial Highness argues that the instructions under which the ex-Vice-President Sieh (when brought up to Peking in 1863, he was made a Vice-President of one of the Six Boards) was directed to proceed to Yunnan, were issued in a form which it is not usual to communicate or publish. This was the excuse given for the non-publication of the Decree censuring the Acting Governor-General Ts'en for his dilatoriness, which the Grand Secretary Li had assured me should be published, and which was formally communicated to me by the Prince himself.

I was obliged, to my regret, to send the inclosed rejoinder to this reply, and lest I should hereafter be charged with conduct such as I had felt called on to impugn, I wrote a separate short note to the effect that Mr. Vice-Consul Davenport had been attached to Mr. Grosvenor's Mission; an incident that I had forgotten to mention to the Prince.

This closes the correspondence regarding this most unhappy business up to date, I shall submit some observations to your Lordship upon the situation, as I now view it, in the following despatch.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure 1 in No. 11.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, December 9, 1875.*

IN a communication dated the 22nd of October, the Viceroy of India informs me that, according to reports received at Bhamo about the end of August by the Agent of the Indian Government there stationed, from Chinese traders frequenting Bhamo, the Momein authorities had been desired by the Provincial Government to arrest Mr. Margary's murderers, and that a Chinese, surnamed Li, and some slaves of the Kakhyen tribe had been accordingly arrested at Manwyne and brought to Momein; that these men were not, however, the persons actually engaged in the murder of Mr. Margary, but substitutes. Later, a Chinese from Manwyne arrived with the news that these substitutes had had their fingers cut off.

Reports of this kind have already found their way to England, and have naturally attracted attention. I do not here state that they are true or false, but I deem it my duty to bring to your Imperial Highness' notice the fact that they are current.

The attack of an armed force upon a party of gentlemen entering China under passports sealed by the Tsung-li Yamên, independently of the treacherous murder of one of their number, as your Imperial Highness cannot fail to be aware, has excited the most serious misgivings in England. The Government and people are alike determined to insist on the punishment of the persons responsible for both outrages, not as an act of retribution, but in order that the security of British subjects in China may be more perfectly insured.

When I was leaving Peking in the spring, I warned your Imperial Highness that the smallest appearance of a disposition to bar the way to free inquiry would be very unfavourably interpreted by Her Majesty's Government, and I feel bound to repeat this warning. A belief that the evidence in this unfortunate case was being unfairly dealt with could not fail to be of the most serious consequence.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.



## Inclosure 2 in No. 11.

*Mr. Wade to the Prince of Kung.*

Sir, Peking, December 10, 1875.  
 IN the manuscript edition of the "Gazette" of last evening, there appeared an Imperial Decree to the effect that "Li Han-chang with his colleague (or colleagues) had sent up a general statement of the particulars of the murder of Ma-chia-li, which they had been commanded by Decree to inquire into and take action upon, and now requested that the officials who had acted ill might be degraded and brought to trial. The murder of Ma-chia-li," continues the Decree, "had been inquired into by Li Han-chang and his colleagues publicly and privately. The whole of the papers relating to the case had been brought up and examined by them, and they had deputed trusty officials to make strict investigation in a spirit of justice."

The case referred to in the "Gazette," I cannot doubt, is the murder of Mr. Margary, the British interpreter attached to Colonel Browne's Mission; but as it is but a few days since I was informed at Tien-tsin by the Grand Secretary Li that, according to letters received from his brother Li, Governor-General of Hu Kwang, his Excellency could not reach Yünnan Fu before the 20th of November, I venture to ask your Imperial Highness if the Decree published in the manuscript "Gazette" is an authentic paper. If it be, I shall be greatly obliged by communication of the Memorial referred to in the Decree at your Imperial Highness' earliest convenience.

I have also to request your Imperial Highness to inform me who the colleague or colleagues may be that have been associated by Decree with his Excellency Li Hang-chang. The Decree communicated to me in your Imperial Highness' despatch of the 24th June, mentioned no one but his Excellency.

I shall have some further observations to submit to your Imperial Highness in due time.

I renew, &c.  
 (Signed) THOMAS FRANCIS WADE.

## Inclosure 3 in No. 11.

*The Prince of Kung to Mr. Wade.*

(Translation.) Peking, December 10, 1875.

A MEMORIAL was received on the 9th instant from Li, Governor-General of Hu Kwang, commissioned to investigate affairs in Yünnan, and his colleagues, reporting a general outline of the result of their investigation into the murder of the official interpreter, Mr. Margary, and requesting that the officials who have failed in the due discharge of their duty be stripped of their rank and placed on trial; and on the same day an Imperial Decree was respectfully received. Independently of the further communication which shall be made when the Memorial reporting the conclusion of the proceedings from his Excellency Li and his colleagues shall have been received, after the British officials to be present at the inquiry shall have reached the province, it is the Prince's duty to forward a copy of the Memorial and Decree now received for the information of the British Minister.

K.S., 1st year, 11th moon, 13th day.

*Memorial.*

(Translation.)

Li Han-chang and his colleagues, looking upward, entreat the Sacred Glance on their Memorial, which they present to report the dates of their arrival in Yünnan, with a general outline of the result of their joint deliberations, and to pray His Majesty to signify his pleasure that, as a preliminary step, the civil and military officials who have failed in the due discharge of their duty, be stripped of their rank and placed on trial.

They humbly represent that on the 26th of June the following Decree was received from His Majesty:—

"A Decree has been issued this day appointing Li Han-chang to proceed to Yünnan to inquire into certain matters. We command him to proceed with all dispatch to

Yünnan, and to act in concert with the Governor-General and the Governor, in judicially inquiring into and deciding,\* in a spirit of fairness, the case of the murder of Ma-chia-li:”

Also, that, on the 7th September, the following Decree was received:—

“Let Wu T'ang† convey notice to the ex-Vice-President Sieh Hwan‡ to proceed with all dispatch to Yünnan, to assist Li Han-chang in the management of all he has to do, in order that an efficient coadjutor be supplied to him.”

Your servants, after having reverently reported their departure, proceeded thereupon, in obedience to their instructions, along the several stages of their journey. Your servant [Li] Han-chang arrived in Yünnan on the 13th, and your servant [Sieh] Hwan on the 20th November, having examined [the subject] publicly, and instituted secret inquiries as they travelled along. After reaching the provincial capital they conferred with your servant [Ts'ên] Yü-ying, of whom they verbally inquired the general features of the case, and caused to be brought before them all the documents constituting the record of the affair, upon which they have with all dispatch commissioned competent officials to arraign the prisoners charged with the crime of murder§ who have already been apprehended and brought up for trial, and to elicit by means of a vigorous investigation the actual facts, which shall be laid in a Memorial before the Throne:

Prostrate, your servants have to state that, at the time when Ma-chia-li proceeded from Yünnan to Burmah, being in possession of a passport from the Yamên of Foreign Affairs, he was duly escorted in perfect safety from point to point through the districts he passed through.|| The aforesaid foreigner¶ and his companions afterwards came back from Burmah to Yünnan, between which there intervenes the territory inhabited by savages and the tribes (of the Shans). This region is habitually the resort of numbers of lawless offenders, who league themselves with the savages to plunder travellers. A multitude of rumours were at this time circulated among the notables\*\* and people of T'êng-yüeh (Momein), stating that the foreigners were about to enter the country at the head of a large body of foreign soldiers; and the said notables and people, having never had any experience of the conduct of foreign soldiery, apprehended that, on entering the district, they would treat them with oppression and ignominy, and they consequently assembled a force of local militia for the protection of their own persons and property. Lawless offenders hereupon, who with the savages were lying in wait for opportunities, took advantage of the occasion to commit robbery and murder, and thus brought on the affair. Although, when returning from Burmah, the aforesaid foreigner did not give notice beforehand to the local authorities to send an escort to meet him, yet, on the other hand, the Sub-Prefect of T'êng-yüeh, Wu K'ialiang, showed himself incapable, at the time when the notables and people assembled their force of militia, to guard against the matter in its incipient stage, either by means of persuasion or by coercive measures; and when the disaster had taken place on the journey, months elapsed before any one was taken into custody, notwithstanding that stringent instructions were repeatedly dispatched by your servant [Ts'ên] Yü-ying commanding the apprehension of the guilty parties within a given time. Such delay in the effecting of arrests furnishes (or has furnished) the foreign Government (or, foreigners) with a plea for complaint. There has unquestionably been a failure in the due discharge of his duty. Tsiang Tsung-han, the Acting Brigadier-General of the T'êng-yüeh command, who, while specially invested with the control-in-chief of this region of country, took absolutely no cognizance of the occurrence of so serious an affair, has likewise rendered himself liable to punishment. Your servants deem it their duty to request a Decree ordaining that both the Sub-Prefect Wu K'i-liang and the Acting Brigadier-General Tsiang Tsung-han, be removed from their posts and provisionally stripped of their rank, and arraigned with the other parties for trial. If such facts should be elicited as that troops were moved to stop [the party from Burmah], or that instigation

\* *Lit.*, winding up, bringing to a conclusion. The expression used, “Kieh,” is that which is consecrated by usage to the final termination of judicial proceedings.

† The Governor-General of Szech'wan.

‡ A retired official. In 1858 he was Taotai at Shanghai, and, as such, engaged with Mr. Lay in Tariff negotiations; subsequently Acting Governor of Kiang-su; and, 1863, made a member of the Yamên of Foreign Affairs. Since 1868 he has been in retirement in his native province.

§ In Chinese, “hiung fan,” which may be translated as “criminals guilty of murder,” or simply “murderers.” No distinction is drawn, in Chinese judicial parlance, between a person accused by authority and one found guilty of a crime.

|| Instead of “through the districts,” &c., the sentence may also be read “by the district officers,” as the expression “ti fang,” locality or district, is occasionally used in the sense of the officers locally in power.

¶ In Chinese, “Kai yang jên têng,” “the aforesaid foreign man and others with him.” The expression, in an official document, is hardly respectful.

\*\* The “notables” or “gentry” of a Chinese district are such among the resident population as are in possession of official or literary rank, acquired either by purchase or by competition and service. Retired functionaries, living at their native places, constitute the leading element in this class.



was given to commit the murder, the most rigorous proceedings shall be farther taken according to law.

Your servants, having held consultation together on successive days, and being agreed in their views, reverently present this Memorial, setting forth their conjoint statements, upon which they, prostrate, entreat the Sacred Glance and the instructions of your Majesties the Empresses and your Majesty the Emperor. They have to add that Liu yoh-chao, the Governor-General of Yünnan and Kweichow, has not yet returned to his post, and his name is consequently not appended to this Memorial.

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*Extract from the "Peking Gazette" of December 9, 1875.*

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*Decree on Yünnan Outrage.*

(Translation.)

Li Han-chang and his colleagues have memorialized, reporting a general outline of their inquiry, undertaken in obedience to our Decree, into the murder of Ma-chia-li (Mr. Margary), and requesting that the officials who have failed in the due discharge of their duty, be stripped of their rank and placed on trial.

In the case of the murder of Ma-chia-li, Li Han-chang and his colleagues, having both investigated the matter publicly, and instituted secret inquiries, having caused all the documents connected with it to be laid before them for examination, and having deputed competent officers to conduct a judicial investigation in conformity with the principles of justice, report to us that on the road between Yünnan and Burmah there intervenes the territory occupied by savages and the tribes (of the Shan States), which has habitually been the resort of numerous robber bands. At the period in question the notables and people of T'êng-yüeh (Momein) having heard that foreigners, at the head of a large number of foreign soldiers were about to enter the country, assembled on this account a body of train-bands (or local militia) for their own protection. On his journey from Yünnan to Burmah Ma-chia-li, being provided with a passport, was duly escorted from point to point through the different districts, which he traversed in perfect safety. On [his] return at a later date from Burmah to Yünnan no notice was given to the local authorities to send an escort to meet [him], the consequence of which was that certain lawless offenders, lying in wait for opportunities, took advantage of the occasion to commit robbery and murder.

This being the tenor [of the memorial, it appears that] at the time when the notables and people collected their force of militia, Wu K'i-liang, the sub-prefect of T'êng-yüeh, was incapable of guarding in time against what followed, either by the exercise of persuasion or by the application of coercive measures, whilst after the disaster had taken place months went by before arrests of the guilty parties were made, notwithstanding that stringent orders were issued by Ts'ên Yü-ying commanding the apprehension of the criminals within a given time. He has unquestionably failed in the due discharge of his duty. Tsiang Tsung-han having, as acting Brigadier-General of the T'êng-yüeh command, the chief control of this region, incumbent upon him, has equally rendered himself liable to punishment by his failure to take any cognizance whatever of the occurrence of an affair of so serious a nature. Let both Wu K'i-liang and Tsiang Tsung-han be removed from their posts, and be provisionally stripped of their official rank, and be brought to trial as parties to the case. If evidence of troops having been moved to oppose [the entrance of the party into China] or of instigation to commit the murder be elicited, let Li Han-chang and his colleagues thoroughly and strictly investigate the matter, in order that the demands of justice be faithfully carried out. Let there be no approach to favour or concealment.

Let the Boards concerned take note.

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Inclosure 4 in No. 11.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, December 12, 1875.*

I AM in receipt of the note your Imperial Highness did me the honour to address me on the 10th instant, inclosing copies of the memorial of the Governor-General Li and his colleagues, and of the Imperial Decree issued in acknowledgment of it. The transmission of these papers by your Imperial Highness of course establishes their authenticity, and I shall forward translations of them to the Earl of Derby. I shall at the same time submit to his Lordship the following observations upon their contents.

From the memorial it would appear that the ex-Vice-President Sieh was commanded by Decree to associate himself with his Excellency Li so far back as the 7th of September. The ex-Vice-President was known years ago to Her Majesty's Government as a high provincial authority, and later as a member of the Tsung-li Yamên. This fact gives to his appointment a special significance, and I cannot but be surprised that I should have received no earlier intimation of it.

I have not been surprised at the appearance of the name of the Acting-Governor-General Ts'ên as the colleague of their Excellencies the Memorialists. The Acting-Governor-General Ts'ên is himself one of the parties accused of misconduct. He is chargeable before Chinese law, if with no graver offence, at least with neglect of precaution before the occurrence of the 22nd of February, and, after the event, with dilatoriness. His dilatoriness was censured from the Throne in a Decree communicated to me by your Imperial Highness in a note dated 29th August, and it was surely into his conduct as much as into that of his subordinates that the Governor-General Li was commissioned to inquire. It is something new that a man in such a position should be joined with his judges in a report upon his own case.

The rapidity with which their Excellencies Li and Sieh have been enabled to complete and forward their report, again, is also astonishing, and its publication at this juncture, after the strong objections advanced against such a course in the Tsung-li Yamên's Memorandum of the 22nd of August, inexplicable.

Lastly, as to the matter of the Memorial itself, it is not the case that Mr. Margary was escorted to Burmah by the local authorities. His letter referred to in my note of the 27th March shows that two "wei yuen" were sent with him by the Acting Governor-General from the capital as far as Yung-ch'ang Fu. Thence he found his way alone to Momein, and from Momein through Nan-tien to Manwyne, where he was received and entertained by Li-hsieh-t'ai. It is not either true that no notice was given of his return. The Governor of Yunnan knew from his passports and from the letters carried by him from the Yamên, that he would return with the party he was sent to meet. He talked fully to Li-hsieh-t'ai on the subject, and before leaving Bhamo he wrote on the 19th and 20th January to Li-hsieh-t'ai and the authorities at Momein to state that he was about to start.

These are, however, inaccuracies of comparatively minor importance. The general account which their Excellencies Li, Sieh, and Ts'ên have forwarded is substantially the same as that submitted last summer to his Excellency Ts'ên by the Tsung-ping Yang and the Taotai Ch'ên, and communicated to me in your Imperial Highness' note of the 31st of July. My reasons for declining to attach any value to the representations of these two officers are fully set forth in my notes of the 20th and 21st August, to which I beg to refer your Imperial Highness. With the evidence therein recorded, it is impossible for me to regard the Memorial of the Governor-General Li and his colleagues otherwise than as a most unsatisfactory report. I should have been pleased to avoid this declaration, but I conceive it my duty to make it, and I cannot doubt that Her Majesty's Government will concur with me in the opinion I have expressed.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

Inclosure 5 in No. 11.

*The Prince of Kung to Mr. Wade.*

Sir,

*Peking, December 13, 1875.*

THE Prince has to acknowledge the British Minister's despatch of the 10th instant, requesting information on the appearance of a Decree relating to the inquiry into the murder of Mr. Margary, and, in reply, he begs to refer to his despatch of the 10th instant, in which he communicated to the British Minister a copy of the Memorial presented by the Commissioner Li and his colleagues, and of the Decree issued thereupon.

With reference to the "colleagues" indicated in the manuscript copy of the Gazette, he has to state that a Decree was issued last September, directing Wu T'ang (Governor-General of Szech'uan) to direct the ex-Vice-President Sieh Hwan to proceed at once to Yunnan to assist Li Han-chang in his mission. This was a Decree (confidentially) forwarded,\* and, consequently, one such as the Yamên of Foreign Affairs is not in the habit of communicating.

\* A distinction is drawn between the "Shang yü" (Decrees) issued for public information, or to publication of which there exists no objection, which the Gazette copyists are bound to publish, and the "K'i yü," or "T'ing K'i," Decrees forwarded under cover of a despatch from the Grand Council, which, it is here implied,



It has farther to be observed that when a High Commissioner is appointed by the Chinese Government to institute an inquiry in any of the provinces, if the [confidential] decree contains wording to the effect that he is to co-operate with the Governor-General and Governor of the province concerned, the officials in question join in signing the report, the duty of drafting which, however, rests solely with the High Commissioner. The "colleagues" indicated in the manuscript copy of the Gazette are the Commissioner Li, the Commissioner Sieh, and his Excellency Ts'ên (the Governor of Yünnan). This reply is accordingly forwarded for the information of the British Minister.

K. S., 1st year, 11th moon, 16th day.

Inclosure 6 in No. 11.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, December 15, 1875.*

I BEG to acknowledge receipt of the two notes that your Imperial Highness did me the honour to address me yesterday, in reply to my communications of the 9th and 10th instant.

I observe that a distinction is taken between the terms Shang Yü and Ch'i Yü. They are both alike raised two places above the column. There can be no doubt, consequently, that whichever of the two denominations be employed, the missive bearing it is neither more nor less than a paper containing the commands of His Majesty the Emperor of China.

Now, in the Shang Yü of the 19th June, communicated to me in your Imperial Highness' note of the 24th of that month, the Governor-General Li was directed simply to proceed post to Yünnan to make inquiries and take action.

In the joint Memorial, communicated to me on the 10th instant, it is stated that on the 26th June there had been received from the Emperor (Ch'in Fêng) a Shang Yü to the following effect:—

"According to His Majesty's pleasure (chih) this day signified Li Han-chang is to proceed to Yünnan to make inquiries and to take action. It is commanded (choh) that he hasten to Yünnan, and, in concert with the Governor-General and Governor, make inquiry in a spirit of fairness into the murder of Margary."

Thus, it would appear, that there were on the same day issued two Shang Yü, directing his Excellency Li Han-chang, in one, to act alone, and in the other, to associate himself with the Governor-General and Governor of Yünnan, and that the first was communicated to me, while the second was not.

The Imperial commands issued to his Excellency Wu T'ang on the 7th September were also, according to the same Memorial, conveyed in a Shang Yü.

It will be my duty of course to forward to the Earl of Derby translations of the notes now acknowledged, as well as a copy of this reply.

I take the opportunity of requesting attention to a passage in the Tsung-li Yamên's Memorandum of the 22nd August, which should properly have been quoted in my note of 12th instant, when I was speaking of the assumed obligation of his Excellency Li to report upon the dilatoriness of the Acting Governor-General Ts'ên.

"It will be the duty of his Excellency Li," says the Memorandum, "to ascertain whether or no the Governor-General and the Governor of Yünnan have been dilatory in their conduct, and to take action accordingly."

I renew, &c.

(Signed)

THOMAS FRANCIS WADE.

Inclosure 7 in No. 11.

*Mr. Wade to the Prince of Kung.*

Sir,

*Peking, December 15, 1875.*

I HAVE omitted to inform your Imperial Highness that when at Shanghae I instructed Mr. Davenport to attach himself to the mission of Mr. Grosvenor.

are of a confidential character. In most cases of importance, a "T'ing Ki," or private Decree, is sent at the same time with the public document. This, it now appears was the case with the Decree of June 19th, the receipt of which, with its accompanying "T'ing Ki," is acknowledged by Li Han-chang under date of June 26th.

I inclose copy of the note I addressed to his Excellency Li, explaining my reasons for this decision.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

No. 12.

*Mr. Wade to the Earl of Derby.—(Received February 27, 1876.)*

(Extract.)

*Peking, December 15, 1875.*

AS my telegram implies, it may be that, notwithstanding the unsatisfactory character of the Memorial and Decree just published, the Chinese Government has not absolutely made up its mind to declare the case closed by the, to my mind, ridiculous report received from the High Commissioner, Li Han-ch'ang, and his colleagues. For any amount of duplicity and puerility we must be prepared.

Still the closing paragraph contains a hint that the Memorialists are not going to ignore altogether what is really the gravest count in my indictment, namely, that troops were moved and murder instigated by official authority. It is quite possible that both documents were prepared, or at least retouched, in Peking. Their precipitate publication I attribute to an intention to make me understand that, of any very serious offence, the Acting Governor-General Ts'ên, and the General Yang, now Acting T'i-tu of Yünnan, Commander-in-chief, that is, of the provincial army, will certainly not be convicted. Both, however, may be made to lose steps, and be formally censured by decree. The two officials of the Momein country will most probably be transported, and, besides a life for a life (the life of Mr. Margary), punishment in a lesser degree of unimportant persons will be largely conceded. As to justice being done, in our sense of the word, as my correspondence from the first will have shown, I have never been so sanguine as to assume that it would be. More, although, as a matter of principle, I imperatively insisted upon the admission of British agents to watch the proceedings, I have never even thought it probable that we should establish the guilt of the really culpable in such wise as to justify us in affirming that we had "secured a conviction." Were it not for the fact that the Chinese authorities unhesitatingly admit that Mr. Margary was murdered, we have as yet nothing but the letters and depositions of certain Burmese to appeal to as evidence of the atrocity, and canvassed as these questions are canvassed in England, I have naturally felt the embarrassment of urging upon the Chinese as incontestable a story, which, at the Old Bailey, would possibly be held to be but imperfectly supported.

Of course, I thoroughly believe all that I have advanced. My indictment of the 20th August, forwarded to your Lordship in my despatch of the 26th of August, was, I need not say, very conscientiously prepared. But the utmost I have ventured to hope all along is this, that such an impression might be produced on the central Government as would compel it to exert its influence on the provinces in such a fashion as would secure foreigners against recurrence of the insults and outrages to which they are periodically exposed.

I say this allowing that such matter of offence is not of very frequent recurrence, and that there is a *pars altera*, which a counsel for the defence might turn to very effective account. But when the offence does come, it comes in a form which, as a rule, puts a *casus belli* in the hand of the power aggrieved, and the Government's treatment of it is always such as seriously to aggravate the offence. The sum of my demands since March last has been, show, by better observance of the Treaties, that you have put away your anti-foreign policy. Except the promise that the trade already existing between Yünnan and British Burma should be put under regulation, and an indemnity, which I dropped almost as soon as I asked for it, I have pressed for nothing that was not within the Treaties, and the accordance of which, were the Government well disposed or convinced of its responsibility, there could be no difficulty in granting. The whole question is divisible into two heads; improvement of diplomatic relations, and satisfaction of commercial rights. The Chinese Government is making no sign with reference to the first, but I do not say that it will make none. I shall keep clear of it, at all events, until the solution of the Yünnan complication is nearer at hand.

The taxation of trade I cannot look to hear anything of, until, in obedience to his instructions, Mr. Hart presents the report he is now engaged in preparing. I may be obliged to enter on a discussion of this question sooner than I desire, but I shall abstain from it as long as possible, it being essential now to make it plain that the Yünnan outrage takes precedence of all other matters. The impression that, in respect of this, we



are determined to be most uncompromising, will be of a certain value. The time is come, however, when the Chinese must be made distinctly to understand that if they trifle with us in this case, a severe chastisement will be inflicted upon the Government. To this understanding, what has fallen from me, or what I have been instructed to write, has not contributed more than a passing influence. Their long habituation to the near approach of dangers calculated to imperil the very existence of the Empire, has confirmed them in their constitutional immobility. They are besides confirmed in their unwillingness at all times to believe in the worst by their faith in luck, and the tone of our newspaper articles and speeches, which, even when they discover a determination perfectly intelligible in England, to exact what is due to us in this instance, scarcely ever fail to enlarge upon our consideration for China, our interests in the country, and our consequent unwillingness to strike, produces among the Chinese but one effect. The weight of the few words that, taken alone, are more or less intimidatory, is entirely counter-balanced by the expressions of good will and sympathy which I am, as much as any man, delighted to think that we feel towards this nation.

## No. 13.

*Mr. Wade to the Earl of Derby.—(Received February 27, 1876.)*

My Lord,

*Peking, December 16, 1875.*

I HAVE reason to fear that my letter to Mr. Grosvenor on the torture of persons accused, which has been already forwarded to your Lordship, never reached him. I have sent him copies in triplicate, which Mr. Alabaster will try to transmit to him, one by the Government courier, the other two by private hands. I have at the same time modified my instructions regarding his return from Yünnan. I think it desirable that he should be out of Yünnan as soon as possible, returning if he can by way of Burma. I inclose copy of my letter to him, also of a note which will accompany the copy sent by Government courier to Li Han-ch'ang.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

## Inclosure 1 in No. 13.

*Mr. Wade to Mr. Grosvenor.*

Sir,

*Peking, December 14, 1875.*

BEFORE Mr. Davenport's departure from Shanghai I had some conversation with him regarding the possibility of torture being applied to persons examined in the proceedings you have been commissioned to watch, and I thereupon wrote you a letter of instructions which it was my intention should be sent to you when Mr. Davenport went up to Hankow. Finding that there is no note upon the draft to show that it was so sent, I fear that it may have been overlooked, and I accordingly take this opportunity of forwarding you a copy of it.

\* \* \* \* \*

On my arrival at Tien-tsin I saw his Excellency Li Hung-ch'ang twice; once at his Yamên, and once at the Consulate. In conversation he tried hard to extract from me my opinion as to the minimum of satisfaction that would content the British Government, his chief object apparently being to make the best terms he could for the Acting Governor-General T'sên, whom, in effect, he did his best to exonerate altogether.

My answer in sum was this: "If I am told the whole truth, though Mr. Margary's murder is beyond dispute, I do not say but that I may find a way, by which not even one life need be demanded. From the standpoint of our civilization we do not seek punishment in a spirit of vengeance, but in order to the prevention of a repetition of offences."

His Excellency pressed me to name the way I thus implied I had in reserve, but this I declined to do until I should be in possession of such information as the Chinese Government might have to give me, and, as he professed to be without any himself, we got no farther. His brother, the Commissioner, he said, had not yet reached Yünnan-fu, and could not reach it before the 18th November.

I returned here on the 29th November, and upon the 9th instant was surprised by the issue of a Decree replying to a Memorial from their Excellencies, Li, Sich, and T'sên, which Memorial was itself published the following day, and was to the effect that the

Commissioner Li had arrived on the 13th November, and the Commissioner Sieh on the 20th.

They had conferred with the Acting Governor-General Ts'ên, and the result was a joint report. Mr. Margary, they represented, being provided with a passport from the Tsung-li Yamên, had been escorted safely from Yünnan into Burma. When returning, he gave no notice of his coming, and the notables and people of the Momein jurisdiction, being alarmed by rumours that foreigners were coming into the country with a large army, called out a volunteer force for their protection. This state of things gave their opportunity to the outlaws who frequent the border-land inhabited by savage tribes, and, in league with some of these, they did acts of robbery and murder.

The T'ung-pan, named Wu, being the civil authority, and the Tsung-ping Chiang, chief military authority in the Momein jurisdiction, were to blame—the first for not stopping the enrolment of militia by advice or exercise of power; the second for his indifference. The Commissioners recommend the suspension and trial of these officials; also a searching inquiry to ascertain whether troops had been moved or murder instigated.

From your acquaintance with the facts as exposed in my note to the Prince of Kung under date the 20th August, you will understand that this story, which is little more than a repetition of the report of Yang-tsung-ping, and Chên Taoutae, communicated to me by the Prince of Kung on the 30th of July last, is not a story that I am likely to accept. There are, at the same time, other circumstances calculated to confirm my misgiving that the Chinese Government is disposed to act with even less fairness than I had anticipated. The Commissioner Sieh, formerly in the Yamên, was added to the Commission by a Decree of the 7th of September. This was never communicated to me, and the reasons given for its non-communication are excuses of the well-known order. The Commissioner Sieh is notoriously a most anti-foreign Chinese. I made his acquaintance first in 1854. He was in 1858-60 Taoutae at Shanghai, and in 1863-68 a Minister of the Tsung-li Yamên. He will hardly fail to attempt to play the bully. Caution and temper are, therefore, doubly necessary in dealing with him and his colleagues.

This letter will, I trust, reach you by a private hand, but I have written also to you by an official courier, and should the copy he carries ever be delivered to you, you will note that the matter marked off above by asterisks, as below, has been omitted in it, but that the instructions which follow have been retained in it.

\* \* \* \* \*

Should it have come to your knowledge otherwise, before this reaches you, that the Memorial of the High Commissioner Li, the ex-Vice-President Sieh, and the acting Governor-General Ts'ên has been published in Peking, I shall be glad to learn that you have avoided all spontaneous allusion to it, but that if it has been brought by any of these high officials to your knowledge, you have limited yourself to requiring that statement so completely at variance with those contained in the Burmese letters and dispositions in our possession, be substantial for my information. If it be urged, as it probably will be, that the witnesses, on whose testimony the report is based, are at Momein or Manwyne, that is simply an *à fortiori* reason for your proceeding to those places, a visit which is enjoined in your instructions, and you will make your stay at Yünnan-fu as short as possible. If a respectable number of witnesses be produced at that city, you will of course instruct your deputies to hear what they have to say. Should their evidence be greatly at variance with that in our hands, confine yourself to pointing out, briefly, the discrepancy, and then, insisting always upon my injunction that no one condemned in the proceedings is to be put to death till the Tsung-li Yamên and the Legation shall have been communicated with; you will prepare a plain report, copy of which, without debate, you will request the High Commissioner to forward me. You will at the same time request his Excellency to take steps to secure the safe passage of your whole party viâ Manwyne to the frontier, which you will cross as soon as you ascertain that an escort from Bhamo is ready to meet you.

This is a modification of my original instructions, but I conceive that the circumstances of the case as now before me make the change preferable.

\* \* \* \* \*

You will understand from what has gone before that you are all to return viâ Burma, unless you find it absolutely impossible.

You will, of course, endeavour to forward me copy of your report by a private hand.

I am, &c.

(Signed) THOMAS FRANCIS WADE.



## Inclosure 2 in No. 13.

*Mr. Wade to his Excellency Li Han-chang.**Peking, December 15, 1875.*

MR. WADE presents his compliments to his Excellency Li.

It is Mr. Wade's wish that whether criminals arraigned before the tribunals of the Yünnan Government be officials or of the people, no one shall be punished until reference be made to the Central Government, and by Mr. Grosvenor to the British Legation.

Mr. Wade has written to inform Mr. Grosvenor that this is his desire, but being in some doubt whether his letter may not have failed to overtake Mr. Grosvenor, Mr. Wade will be obliged to his Excellency Li to inform Mr. Grosvenor of the receipt of this note. That his intention may not be mistaken, Mr. Wade adds the English text of the note. Production of this will leave Mr. Grosvenor in no doubt as to its meaning.

As it is also possible that Mr. Wade's former note may have failed to reach his Excellency, Mr. Wade adds a copy of it herewith.

## No. 14.

*Consul Medhurst to the Earl of Derby.—(Received February 27.)*

(Extract.)

*Shanghai, January 13, 1876.*

I HAVE the honour to inform you that I have this day forwarded to your address, a telegram, as under :

"Advices from Grosvenor dated 13th December. Had reached Kwei-chou-fu. All well."

## No. 15.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, March 1, 1876.*

I HAVE received and laid before the Queen your despatch of the 15th of December, reporting what passed at the interviews with Kuo and Hsü, the newly-appointed Envoys to Great Britain, and I have to convey to you the approval of Her Majesty's Government of the language used by you on the occasions in question.

I am, &amp;c.

(Signed) DERBY.

## No. 16.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, March 1, 1876.*

I HAVE received and laid before the Queen your despatch of the 15th of December, together with its inclosures, on the subject of the inquiry in Yünnan into the circumstances attendant upon Mr. Margary's murder; and I have to convey to you the approval of Her Majesty's Government of the notes addressed by you to the Prince of Kung, copies of which you inclose.

I am, &amp;c.

(Signed) DERBY.

## No. 17.

*Sir T. Wade to the Earl of Derby.—(Received March 13.)*

My Lord,

*Peking, January 7, 1876.*

IN my despatch of the 21st October I stated the circumstances under which it happened that I availed myself of Mr. Hart's services as an intermediary at a critical juncture in my last negotiations regarding the guarantees I required to enable me to send Mr. Grosvenor to Yünnan.

To put Mr. Hart in possession of the matter of which I conceived he would require to be exactly informed, I sent him on the morning of the 5th October a note and a memorandum. Though very hastily prepared, the latter appears to me to present the case in a form that your Lordship may find useful, and I have, therefore, with Mr. Hart's permission, caused a copy of it to be taken.

I beg to inclose copies of the two papers referred to. They would in some places have been clearer, had I had time to draft them. They were sent to Mr. Hart as they stand, unrevised.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure 1 in No. 17.

*Sir T. Wade to Mr. Hart.*

*Peking, October 5, 1875.*

My dear Hart,

THE Prince has two subjects to write upon. They may be disposed of in one despatch or two, as he sees good.

Regarding trade, I shall be satisfied if he says that, referring to my representations through Li Chung-t'ang when I was at Tien-tsin, and directly to himself, he has already promised in his despatch of the 22nd September, in general terms, that wrong shall be set right.

As this does not appear to me to be sufficiently explicit, he now assures me that you have received (as you did receive on Saturday) instructions to report on the whole question of taxation of foreign trade, and to suggest such measures as you think will legitimately develop foreign trade without injury to revenue.

As to the frontier, he might state that, passports having been issued to enable an Indian Mission to enter Yünnan from the Burmese side, it was presumable that a fresh mission would be sent, and that when it was there would, of course, be no objection to the officer in charge conferring with an officer of corresponding rank on the subject of trade; but that His Imperial Highness had assumed that no mission would be sent till the enquiry was terminated, and that he puts it to me whether this is not the most reasonable arrangement. The essential is the Decree.

Yours truly,  
(Signed) THOMAS FRANCIS WADE.

P.S.—I leave you a discretion, of course,

T. F. W.

Inclosure 2 in No. 17.

*Memorandum.*

THE Yamèn must remember how I am situated, not as Mr. Wade, but as the Minister of England.

There are two questions to which Her Majesty's Government is looking for satisfactory answers—

1. Will justice be really done in the Yünnan affair?
2. Is there reason to hope that the Chinese Government will so revise its policy as to secure its relations against the interruptions to which crimes like the Yünnan outrage, and even lesser violations of Treaty, expose them?

I had no object in what I advanced last March but the obtaining of such guarantees as would enable me to answer these two questions satisfactorily, and had I then withdrawn the Legation, Her Majesty's Government, I feel sure, would have approved my action.

I accepted passports for an agent who should be present at the Yünnan enquiry, and I then waited for information from India.

I received this in June, the Yamèn still declaring itself to know nothing except that officers had been sent to the scene of Mr. Margary's murder.

However, the Chinese Government did in June appoint a special Commissioner, a step the Yamèn had declared impossible in March, and I sent Mr. Grosvenor, the gentleman I had named to assist in the enquiry, to visit him. Mr. Grosvenor returned to Shanghai on the 15th July.

I had telegraphed to Her Majesty's Government that the appointment of a special



Commissioner was a good measure. On receiving Mr. Grosvenor's report of his visit I was obliged to telegraph that I was far from satisfied.

The ill-impression produced on me by the Special Commissioner's language to Mr. Grosvenor was confirmed on my arrival at Tien-tsin on the 1st August. I had obtained a full account of what took place on the Yünnan frontier from Colonel Browne, the officer attacked, who had been sent from India to Shanghai to give me information. On my arrival at Tien-tsin I received a despatch, dated 31st July, from the Prince of Kung, to the effect that, according to the report of the Yünnan Government, Colonel Browne had been attacked by savages, who wanted to plunder his baggage. But the Grand Secretary Li informed me, almost at the same moment, that Colonel Browne's assailants were t'uan lien, train bands. His Excellency Ting declared that they were yü min wu chih, simple people who knew no better. Since my return to Peking I am given to understand that the Grand Secretary Wensiang suggests that they were Mahometan rebels disguised as Chinese troops. Let the Yamên reflect what the effect in England will be of such explanations as these.

But I have anticipated. After receiving the Prince of Kung's despatch of the 31st July I might have at once withdrawn. I am confident that my withdrawal would have been approved. I still endeavoured to obtain from the Chinese Government such guarantees as would authorize me to say to Her Majesty's Government that Mr. Grosvenor would have fair play in Yünnan.

The guarantees I required again, with one exception, were after all but observance in part of Article IV of the Treaty of Tien-tsin, and a more perfect observance of the commercial clauses, difficulties pleaded in the way of such observance being to be obviated, if needful, by the expansion of the area of trade, in plain words, new ports.

The exception was an agreement that if a new Indian Mission were sent, an officer of the Yünnan establishment should be directed to consider with him the conditions of the trade now existing between British Burma and Yünnan, with a view to its ultimate regulation; no further step being taken until the Chinese officer had reported to his own Government, and the British officer to me.

Thinking that his Excellency Li appeared to object to the proposed communication upon such a subject with an officer of the Indian Government, I offered to substitute Mr. Grosvenor for the Indian officer.

My reason for urging this condition was two-fold. In the first place the Mission repulsed last February was sent for the very purpose of examining the conditions of this trade, and reporting to the Indian Government, within whose jurisdiction British Burma lies. Secondly, the repulse of the Indian Mission was, through the Government of India, a serious affront to the Government of England, and I looked to a formal promise, such as I asked for, as an acceptable form of *amende*.

This is the explanation of my persistence in pressing the propositions laid before the Grand Secretary Li and the Tsung-li Yamên. Of what I laid before the Grand Secretary Li scarcely anything was accorded that I can point to as answering the purpose I avowed. The intention of the Chinese Government to send missions abroad was known months ago, and it was impossible for me to assert that the mission of Kuo Sung-tao was a guarantee that the Yünnan inquiry would not be trifled with.

On all other points it became so evident to me, after I arrived in Peking on the 12th September, that the Yamên's purpose was not immediately to do anything, that on the 18th I gave the Prince of Kung formal notice that I should withdraw the Legation and Port communities, as I had told the Grand Secretary Li I would.

I renewed the discussion notwithstanding until the 23rd, when, after a most unsatisfactory conference on the question of intercourse between foreign Ministers and the Chiefs of Departments, the only measure in satisfaction of the obligations of Article IV I had proposed, I decided to send Mr. Grosvenor to England.

This should properly have closed my negotiations, but being led to suppose it possible, from what was said to Mr. Mayers on the 24th, that there was still an opening for accommodation, I reopened them on the 25th, premising this time that unless they could be favourably terminated by the evening of the 28th, they should not be prolonged.

On the evening of the 28th I received from the Prince of Kung copies of the Decree and Memorial since published regarding intercourse. The Memorial I consider a most satisfactory paper. But I am still as far as ever from an answer to my other demands. They were still to be "talked over." That is to say they were just where they were at the beginning of August.

Now, if with an affair like the Yünnan affair on my hands I had been asking for the fulfilment of Article IV, or satisfaction of Treaty provisions affecting trade, as a sort of set-off against the outrage committed, my Government would have been very ill-pleased.

I did not do this. In March I pressed my propositions on the general ground that redress of griefs would be acceptable, and that the manifestation of a determination to improve relations would be looked on as a guarantee that the Yünnan affair would be properly dealt with and the future secured.

Since July last all I have sought is such a guarantee of the good faith of the Chinese Government as would justify me in saying that I do not send Mr. Grosvenor on a fool's errand. For if his mission prove no more, the last end will be worse than the first.

The Chinese Government has made one step that all men will approve, in publishing the Memorial and Decree of the 28th September. But to my Government it will have lost much of its value as a guarantee, when I report all that has passed in conference and correspondence since the 12th September.

And now for the second time since that date I have given notice of my intention to withdraw. I had declared more than once, especially on the 29th, that if the propositions then under debate were not acceded to there must be in any fresh negotiation new propositions; and I am certain that if I neither withdraw nor advance any fresh proposition, I shall be charged with, on the one hand, having led the Chinese Government to suppose that I was infirm of purpose; on the other, and that is more important, of having accepted as guarantees what, seeing how they have been conceded, are hardly to be considered guarantees at all.

I have yesterday, through Mr. Hart, put forward a proposition which, were it given effect to, would undoubtedly do much to reassure the public mind in England. The Chinese Government having manifestly misunderstood my suggestion of measures of the character of those heretofore proposed—measures having reference to the personal position of the British Minister, and the rectification of the duty question; measures, in short, which may be categorised as materially advantageous, I therefore asked for the publication of the Memorial and Decree communicated to me in a despatch from the Prince of Kung while I was still at Tien-tsin.

I am told that for formal reasons this is impossible. I am persuaded, after a long study of the "Peking Gazette," that it is not impossible. However, I have one, and only one, alternative.

Let the Yamên pray this day a Decree to the effect that whereas the Treaties authorise foreigners to travel with passports, which are issued to them by their own officials, and countersigned by Chinese authorities, it has been represented by the Tsung-li Yamên that as this is not as widely known as it should be, and that untoward events are sometimes the consequence; that last February, in Yünnan, a party of British officers travelling under passport was attacked and their interpreter murdered; that this affair is being inquired into, a High Commissioner having been sent to preside, and that all China must take notice, &c.

If there be a difficulty about such a Decree as this, if the Central Government is unwilling or unable to declare itself in this sense, I cannot believe it willing or able to do its duty in Yünnan. I shall not feel at liberty to send Mr. Grosvenor to Yünnan. He will return to England, and I shall at once withdraw, as I have said, proceeding myself to Tien-tsin to-morrow to warn the community.

What is at this moment most discrediting the Chinese Government in connection with this outrage, is that it has never ventured to allude to it publicly, and such a reference as I suggest is become indispensable.

If the Yamên is in earnest, it will let me have the papers I require by to-night:—

1. A despatch on the taxation of trade.
2. A despatch on the Yünnan frontier trade.
3. The Decree as above.

I will make one concession on my side. On receipt of these three papers I will promise in writing that no mission to consider Yünnan trade relations shall be sent till the judicial affair is terminated.

(Signed)

THOMAS FRANCIS WADE.

October 4, 1876.

No. 18.

*Sir T. Wade to the Earl of Derby.—(Received March 13.)*

My Lord,

Peking, January 13, 1876.

IN my despatch of the 15th December I had the honour to forward copies of two notes addressed by me to the Prince of Kung. The Prince duly replied to both,



taking exception to my criticisms. Nothing can be less satisfactory than the explanations of the contradictions I had pointed out, although I have let it be understood that I am seriously dissatisfied. I sent no answer to either of his Imperial Highness's notes, and shall send none until after the arrival of the in-coming mail, now hourly expected.

Translations of the notes are ready for transmission, but I shall reserve them until I have replied to the notes.

The mail may possibly bring me telegrams from your Lordship, dispatched after receipt of the correspondence sent home with Mr. Edwardes.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

### No. 19.

*Sir T. Wade to the Earl of Derby.—(Received March 13.)*

My Lord,

*Peking, January 13, 1876.*

IN the last fortnight the two Envoys Designate and their friends have had several conversations with Mr. Hart, Mr. Mayers, Mr. Hillier, and myself, from which I am led to infer that the Chinese Government is, as I have telegraphed, alarmed at the manner in which I have received the Memorial and Decree relating to the Yünnan affair. The Government will not, however, surrender until it be fairly frightened into the conviction that we are not to be put off with puerilities, and it will not, I fear, attain to this point until we are seen to be preparing, in the event of justice being refused us, to take the law into our own hands.

My rejoinder to the Prince's notes will review the whole question. Memoranda of the conversations above referred to are ready for transmission to your Lordship, and I trust that the great difficulties of the situation will, with the information these papers will supply, be made sufficiently clear.

I am asked, directly and indirectly, what it is that I require; but, with the Chinese Government committed to the puerile falsehoods set forth in the objectionable Memorial and Decree, I can hardly give a plain answer to the question until I hear from Mr. Grosvenor how he has been received in Yünnan, and with what explanation our charges against the Provincial Government have been met.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

### No. 20.

*Consul Medhurst to the Earl of Derby.—(Received March 13.)*

My Lord,

*Shanghai, January 24, 1876.*

I HAVE the honour to inclose extracts from a private journal which I have this day received from the Honourable T. G. Grosvenor, and which I am transmitting to Her Majesty's Minister at Peking.

I have, &c.

(Signed) W. H. MEDHURST.

### Inclosure in No. 20.

*Extracts from Mr. Grosvenor's Private Journal.*

*On the Yang-tsze, a few miles below Chung Ching Fu,  
December 30, 1875.*

I BEG to forward further extracts from my diary concerning the journey of the Mission from Kwei-chou-fu thus far. Whilst at Kwei we were very kindly received by the Roman Catholic missionaries. Kwei-chou-fu, it appears, is both an excise and likin station. The missionaries said that the officials collected more than 1,000,000 taels annually at this place, of which but 300,000 taels found their way into the Imperial Exchequer. Whilst on this subject it will be as well to mention that Sungpaohua was unable to obtain me a tariff of "likin" at Kwei-chou-fu, but had sent me a message to explain the reason, which was that the authorities had received instructions to discontinue levying "likin" on

foreign goods. I regret that this message was not delivered to me at Kwei-chou-fu, as I should have reported it in my last letter.

Coal and tobacco, the former predominating, seem to be the staples of trade here. Père Pons said good coal was obtainable in large quantities near Kwei-chou-fu.

I must not fail to record the great civility shown the Mission by the Magistrate of Yun Yang Hsien. Some six miles below the town there are two rapids within a short distance one of the other. At the foot of the first we were met by a Yâmen runner, who stated that he was deputed by the Chih Hsien of Yun Yang to bring chairs and horses to convey me and my suite overland to the head of the furthest rapid. I did not wish to land at the first rapid and was unable to do so at the second, as my junk was on the opposite side of the river to that on which the chairs and horses were. On reaching Yun Yang Hsien I found a very tidy landing stage erected; a space roped off, in case I chose to land, and the Chih Hsien present waiting to receive us.

On the 17th December, about half a day's journey below Wan Hsien, we came upon several parties of men engaged in gold washing. Baber ascertained from those engaged in the operation, who stated that they were not proprietors, but only labourers, that the net result of their work was equal to about 500 cash per diem. This species of industry extends at intervals from the neighbourhood of Wan Hsien down to Chung Ching.

On Christmas day we first came across opium cultivation.

We are off again to-morrow at twelve. Chung Ching is without doubt the great mart of this part of the world. There have been many failures here in the silk trade of late; the overwhelming number of excise stations is the alleged cause.

Mgr. Desflèches and Père Vinçot have shown us every civility possible, putting all their own means of information at my disposal, lending us newspapers and giving us all the geographical assistance in their power.

#### No. 21.

*Lord Tenterden to the Secretary to the Admiralty.*

Sir,

*Foreign Office, March 15, 1876.*

I AM directed by the Earl of Derby to acknowledge the receipt of your letter, marked Immediate, of the 11th instant, and I am, in reply, to request that you will state to the Lords Commissioners of the Admiralty that his Lordship is of opinion that the detached squadron should proceed, as previously arranged, to Chinese waters, as the questions pending between China and this country have not yet been satisfactorily adjusted.

I am, &c.  
(Signed) TENTERDEN.

#### No. 22.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, March 16, 1876.*

I HAVE received your despatch of the 7th of January, and I have to convey to you my approval of the letter addressed by you to Mr. Hart, as well as of the Memorandum which accompanied it, copies of which you inclose, relative to Mr. Grosvenor's mission to Yünnan.

I am, &c.  
(Signed) DERBY.

#### No. 23.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, March 17, 1876.*

I TRANSMIT herewith a new letter of credence which the Queen has addressed to the Emperor of China, accrediting you as Her Majesty's Envoy Extraordinary and



Minister Plenipotentiary, and I am to desire that you will deliver the same in the usual form.

A copy of Her Majesty's letter is likewise inclosed.

I am, &c.  
(Signed) DERBY.

No. 24.

*Consul Alabaster to the Earl of Derby.—(Received March 22.)*

My Lord,

Hankow, January 14, 1876.

I HAVE the honour to inclose copy of a despatch I have addressed Her Majesty's Minister informing him of the arrival of Mr. Grosvenor and party at Chung King.

I have, &c.  
(Signed) CHAS. ALABASTER.

Inclosure in No. 24.

*Consul Alabaster to Sir T. Wade.*

Sir,

Hankow, January 13, 1876.

I HAVE the honour to report the arrival of Mr. Grosvenor and party at Chung King on the 30th December; they were to leave there on the 3rd January, and apparently were all in good health.

I have not yet received Mr. Grosvenor's letters from Chung King, but he probably waited until his actual departure to despatch them.

I have, &c.  
(Signed) CHAS. ALABASTER.

No. 25.

*Sir T. Wade to the Earl of Derby.—(Received March 25.)*

My Lord,

Peking, January 24, 1876.

IN my telegram of the 20th instant I adverted to conversations with Chinese of mark as having authorized my conclusion that without serious pressure we should obtain neither adequate reparation for the past nor security for the future; and I stated my belief that, in the interest of their own country, some Chinese desired to see such pressure applied as would furnish the Government with an excuse for change, that is, for improvement.

The conversations to which I refer have been in very few instances directly with myself, but they have been reported to me by persons on whose intelligence and accuracy I can thoroughly depend. The sum of the information I have derived from them may be briefly stated as follows:—

The anti-foreign feeling in the country is, on the part of a large majority of the educated class, as violent as ever it was. It has indeed been stimulated by the efforts to introduce foreign inventions and education of a certain influential minority. The leading members of the Central Government, so far as there is one, are in a great degree anti-foreign, and where not altogether bigoted opponents of improvement, yet far too much in dread of the censure of the anti-foreign public openly to countenance innovation. In some particulars they are as bigoted opponents as any in the Empire.

I have spoken of the Central Government above as a term of questionable exactness, for, although the Decrees of the Empresses Regent are not to be set at nought, there seems to be in reality no centre of authority competent to understand and direct the machinery of the State.

The intelligence of the junior Regent, the Empress mother, is not denied, but there is also much heard of her frivolity, expensiveness, and violence of temper. The elder lady, the Empress Dowager proper, is a mild, uninfluential character.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

*Sir T. Wade to the Earl of Derby.—(Received March 25.)*

My Lord,

*Peking, January 25, 1876.*

I HAVE the honour to forward copies and translations of further correspondence with the Prince of Kung regarding the Yünnan outrage.

I do not propose for the moment to trouble your Lordship with observations upon these papers, the two first excepted. These are a series of evasion and contradictions which it will be my duty in due time to expose; but I have not noticed them, specifically, to the Prince of Kung, and it will depend upon circumstances whether I do so or not. I shall possibly find means of letting His Imperial Highness understand that I am not deceived without direct communication of the fact.

I have, &c.

(Signed)

THOMAS FRANCIS WADE.

Inclosure 1 in No. 26.

*The Prince of Kung to Sir T. Wade.*

(Translation.)

*Peking, December 17, 1875.*

THE Prince has to acknowledge the British Minister's despatch of the 12th instant, in which he comments upon the Memorial presented by the Governor-General Li and his colleagues with reference to the inquiry into the murder of Mr. Margary. In this despatch the British Minister expresses surprise at having received no notice of the appointment of the ex-Vice President Sieh Hwan as Commissioner, and equal astonishment at finding the name of the Acting Governor-General of Yünnan among the colleagues of the Governor-General Li as Commissioner for this inquiry. He observes that the rapidity with which the Governor-General Li and his colleagues have completed and forwarded their report is astonishing; and, referring to strong objections urged against the publication of documents, before the conclusion of an inquiry, in the Memorandum of Tsung-li Yamên, dated the 22nd of August last, he remarks that the publication of the report at this juncture is inexplicable. He declares that the statements now made respecting the provision of escorts for Mr. Margary from point to point, and also respecting the failure to give notice beforehand on Mr. Margary's return from Yünnan, are not in accordance with the actual facts, and, observing that the general account now presented is substantially the same with that submitted last summer by the Tsungping Yang, and Taotai Ch'ên Si-chên, he requests attention to his notes of the 20th and 21st August, in which he set forth his reasons for declining to attach any value to these representations.

In reply, the Prince has to observe that, as regards the absence of a communication to announce the appointment of the ex-Vice-President Sieh as Commissioner, to assist the Governor-General Li on his mission, and also with reference to the appearance of the name of the Acting Governor-General Ts'ên as one of the parties to the report, he has already, in his note of the 13th instant, given circumstantial replies to the British Minister's observations.

Touching the remark that the Acting Governor-General Ts'ên has been censured by Decree for his dilatoriness, and that notwithstanding this fact he is found reporting upon a case in which he himself is one of the parties concerned, the Prince has to reply that, for the dilatoriness on the part of the Acting Governor-General Ts'ên, censure has already been expressed in an Imperial Decree; and that what the Governor-General Li has been commissioned by His Majesty to inquire into is the Yünnan case, properly so-called, not by any means a question as to dilatoriness of action on the part of the Acting Governor-General Ts'ên; and, as the report now received is a statement in outline of the Yünnan case itself, the Acting Governor-General Ts'ên is not a person whose name should not be appended to the document.

In reply to the comment on the rapidity with which the report has been presented, and also with regard to its publication, it has to be observed that the Governor-General Li and his colleagues have certainly not been slow in transmitting the report now received from them. The reason is that when Chinese high officers are the recipients of an Imperial mandate to undertake a commission of inquiry, it is the practice to despatch agents in advance, even before they themselves set out on their journey, to collect information secretly, whilst the Commissioners themselves proceed to make inquiries as they travel along. The Governor-General Li and those associated with him had, more-



over, been warned by Decree that "if they indulge in any dilatoriness the consequences of so grave an offence will be more than they will be capable to bear," and they consequently lost no time in forwarding a report in outline of the circumstances, as soon as they had reached the Province. In this report they state, besides, that they have, as they travelled along, held investigation openly and also instituted secret inquiries.

As regards the publication of the Report, the Memorial now received from the Governor-General Li and his colleagues is a document in which application is made that the Sub-Prefect and the Brigadier-General of T'êng-yüeh be provisionally stripped of their rank. Now, according to established regulation in China, it may, indeed, happen that officers of inferior grades may be cashiered by decree without publication of the Imperial commands to this effect; but the Brigadier-General and the other officer named are functionaries of comparatively high rank, and holding, moreover, substantive appointments. In a case where officials are to be deprived of this rank, and arraigned before a Court for trial, publication is absolutely necessary, in order that the Departments concerned may be furnished with the information needful to guide their procedure.\* This, also, is a case in which the Chinese constitutional system is concerned, and it is no wise at variance with what is said in the Yamên's Memorandum of the 22nd August respecting non-publication.

Coming next to the contradiction given to the statement that Mr. Margary was escorted from point to point by the district officials, and, farther, respecting his return journey, the Prince has to reply that, in the course of the year 1874, the Yamên of Foreign Affairs issued a passport to Mr. Margary, and likewise wrote to the high authorities of several provinces, including Yünnan, to render him all needful assistance. Without dwelling here upon the assistance which was, in fact, rendered to him at all points along his journey, it is only necessary to remark, in connection with the British Minister's statement, that two officers were sent with him by the Acting Governor-General Ts'ên. That when an officer of this high rank deposes an official to act as escort, notice is sent on, stage by stage, to every Prefect and district Magistrate along the line of route, each of whom is made acquainted with the date of the traveller's arrival within his district, in order that he may carefully render such assistance as is required. Mr. Margary was by this means enabled to reach Burmah in safety, and it cannot be said that the authorities of Yünnan failed to exert themselves to provide him with effectual escort.

In the note now under acknowledgment it is stated that, after reaching Bhamo Mr. Margary wrote twice to inform Li hsieh-t'ai and the Sub-Prefect of T'êng-yüeh that he was about to start.

The Yamên of Foreign Affairs is not in a position to judge with reference to such questions as whether Mr. Margary did or did not write to give notice to the local authorities at T'êng-yüeh; whether or no the letter written was received by the authorities the date at which escorts should have been sent by the said authorities, and the point to which they should have proceeded to meet [the party]; whether, although an intimation was sent to the effect that [Mr. Margary and those with him] were about to set out on their journey back to Yünnan, any one was sent on in advance at the time to give notice to the local authorities; whether Li hsieh-t'ai had or had not any authority to give instructions to the local authorities with respect to sending escorts forward; and whether the notes mentioned in the British Minister's despatch were or were not written to give notice that escorts should be provided, as also what were the circumstances under which the return journey in question was being made.

It is, however, to be supposed that the declaration made by the Governor-General Li and his colleagues, that notice was not sent to the local authorities to send an escort to meet the party on its arrival, is not an imaginary statement.

With reference to the observation that the report now presented is substantially the same as that submitted last summer by the Tsung-ping Yang and the Taotai Ch'ên, the British Minister's reasons for declining to attach any value to which are set forth in his notes of the 20th and 21st of August, to which he requests attention, the Prince would further reply that, inasmuch as the Governor-General Li and his colleagues have received His Majesty's commands to institute their present mission of inquiry, they will be certain (or it will, as a matter of course, be their duty) to apply themselves with earnestness to the judicial investigation of the matter in hand. The case is one which concerns the foreign relations of the Chinese Government in the highest degree (or, the most important interests in the relations between China and a foreign power); and when the evidence, whether affirmative or negative, shall have been impartially dealt with, it will be possible to arrive at a judicial issue.

In the Prince's opinion, so soon as the British officers who have been sent to Yünnan

\* *i.e.*, the fixed rules of State procedure.

to be present at the trial shall have reached the province, the Governor-General Li and his colleagues will assuredly be able to hold the trial in a spirit of justice, to the end that the truth may be arrived at.

Inasmuch, however, as the British Minister declares his opinion that he is unable to regard the Memorial of the Governor-General and his colleagues otherwise than as a most unsatisfactory document, the Prince will transmit in full to Yünnan the observations which the British Minister has advanced; and he will communicate further with the British Minister, in reply, on receipt of a memorial and (or) despatches from the Governor-General and his colleagues.

The present communication is now preliminarily sent for the information of the British Minister.

(Signed) W. F. MAYERS.

Inclosure 2 in No. 26.

*The Prince of Kung to Sir T. Wade.*

(Translation.)

*Peking, December 19, 1875.*

THE Prince has to acknowledge the receipt on the 15th instant of a note from the British Minister, in which he states that a distinction appears to be taken between the terms Shang Yü and Chi Yü.

"In the Shang Yü of the 19th June" (continues the despatch under acknowledgment), "communicated to me in your Imperial Highness's note of the 24th of that month, the Governor-General Li was directed simply to proceed post to Yünnan, to make inquiries and take action. In the joint memorial communicated to me on the 10th instant it is stated that on the 26th June there had been received from the Emperor a Shang Yü to the following effect:—

"According to His Majesty's pleasure, this day signified, Li Han-chang is to proceed to Yünnan to make inquiries and to take action. It is commanded that he hasten to Yünnan, and, in concert with the Governor-General and Governor, make inquiry in a spirit of fairness into the murder of Margery."

"Thus it would appear that there were the same day issued two Shang Yü, and that the first was communicated to me, while the second was not. The Imperial commands issued to his Excellency Wu T'ang on the 7th September were also, according to the same Memorial, conveyed in a Shang Yü.

"I take this opportunity of requesting attention to a passage in the Tsung-li Yamên's Memorandum of the 22nd August, which should properly have been quoted in my note of the 12th instant, when I was speaking of the assumed obligation of his Excellency Li to report upon the dilatoriness of the Acting Governor-General Ts'ên. 'It will be the duty of his Excellency Li' (says the Memorandum) 'to ascertain whether or no the Governor-General and the Governor of Yünnan have been dilatory in their conduct, and to take action accordingly.'"

With regard to the statement in the British Minister's Note that a distinction is taken between the terms "Shang Yü" and "Chi Yü," the Prince would observe that by the constitutional system of China, a "Shang Yü" may or may not be supplemented with a "Chi Yü." With "Shang Yü" a distinction is made between those which are or are not issued for publication, but a "Chi Yü" is never published.

The "Shang Yü" which are published are invariably communicated, but the same course could not well be taken in regard to those which are not published.

A copy of the "Shang Yü," reverently made, was sent to the British Minister in the Tsung-li-Yamên's Note of the 24th June last, but it was a "Shang Yü" for publication which could lawfully be communicated, and accordingly, in writing to Her Majesty's Minister, this first decree was inclosed.

The decree, which his Excellency Li and his colleagues mention having received on the 26th June, being a "Chi Yü" not for publication, could not lawfully be communicated, and hence it was that in writing to the British Minister the second decree was not inclosed.

The British Minister further remarks on the Governor-General of Ssü Ch'uan having conveyed to the ex-Vice-President Sieh his orders to proceed to Yünnan to take action.

The despatch of the ex-Vice-President Sieh was due to a memorial praying that he be transferred thither. His Majesty having signified his approval, a "Chi Yü," commanding that he be notified, was issued, and for this reason the Yamên could not com-



municate the fact to the British Minister. Moreover, after His Majesty's pleasure had been signified to the Imperial Commissioner, any memorials praying for the appointment of associates, or reporting the *personnel* of his staff, emanated from his Excellency alone.

The British Minister calls attention to the passage in the Tsung-li Yamên's memorandum, where it is stated that it will be the duty of his Excellency Li to ascertain whether or no the Governor-General and Governor of Yünnan have been dilatory in their conduct, and to take action accordingly.

The present memorial of the Governor-General Li and his colleagues presents a general outline of the circumstances; if, when these officers shall have reported, in a further memorial, the action taken by his Excellency Li, a decree for publication be received, the British Minister shall be duly informed.

The same day another note was received from the British Minister, stating that in October last Mr. Vice-Consul Davenport had been directed to attach himself to Mr. Grosvenor's mission, and that Her Majesty's Minister had addressed a letter to that effect to the Governor-General Li. The Yamên will write to inform his Excellency of the fact; meanwhile, they beg to acknowledge the receipt of Her Majesty's Minister's note.

Inclosure 3 in No. 26.

*Sir T. Wade to the Prince of Kung.*

Sir,

Peking, January 15, 1876.

I THINK it my duty to request your Imperial Highness's attention to a report in the papers received yesterday from Shanghai, to the effect that fourteen men had been sent up from the district where Mr. Margary was murdered to the prisons of the provincial capital. Two of them died on the road, the remaining twelve do not speak Chinese. It may be in your Imperial Highness's power to say whether any credit is to be attached to the above statement.

I shall be obliged to your Imperial Highness to inform me whether any further representation regarding the attack on Colonel Browne's party or the murder of Mr. Margary has been received from the High Commissioner, Li Han-ch'ang, since the publication of his memorial on the 9th December,

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

Inclosure 4 in No. 26.

*The Prince of Kung to Sir T. Wade.*

(Translation.)

Peking, January 19, 1876.

IN reply to the British Minister's despatch of the 15th instant, requesting information with reference to a statement received from Shanghai to the effect that a number of prisoners had been sent from the locality where Mr. Margary was murdered, to the prisons of the provincial capital, etc., the Prince has to state that whilst, with regard to the murder of Mr. Margary, the High Commissioner Li has been appointed by His Majesty's Decree to proceed to Yünnan and undertake an investigation into the affair, it is the duty of the high provincial authorities to give orders for the arrest and transmission to the provincial capital of the criminals, as connected with the murder, steps should be taken to apprehend, to the end that on the arrival of the Imperial Commissioner they should be forthcoming to be placed on trial and judiciously dealt with. In October last a despatch was received from the Acting Governor Ts'ên, reporting the receipt of a statement to the following effect from the Sub-Prefect Wu K'i-liang:—

"The nine murderers heretofore apprehended, on their examination being held, are all found to be savages ('Kakhyens'). Two of their number, named Lin Lan-kan and A Yung, have died in prison of the severe wounds they have received. The remaining nine (names given) continue to lie in the prison of the Sub-Prefecture (*i.e.*, at Momein). From their confession it appears that the principals and accessories to the murder in this case number twenty-three all told. Nine having been taken into custody, and two killed in fight by the Government troops, twelve are still at large, for whose apprehension steps are proposed to be taken, in order that the entire body may be sent forward to the provincial capital together."

The Acting Governor-General further cites a despatch from the Acting Commander-in-chief Yang Yü-k'ò to the following effect:—

“Having obtained information that the criminals in question had banded themselves together at the Yun Yen Tung Shan (Cloud Precipice Cavern Mountain) lying in rear of the Hu Sung Mountain, and that owing to the nature of the ground and the denseness of the jungle, traversed only by steep and difficult paths, it would be no easy task to effect their apprehension, the Acting Brigadier-General of T'eng-yüeh, Tsiang Tsung-han, was additionally commissioned to undertake this task. Having taken under his orders Lieutenant-Colonel Li Chên-kwoh,\* and the Chief of the Ts'ien-yai tribe, named Tiao Ying-t'ing, he proceeded to effect the capture of the individuals in question. He has now reported that he reached, on the 1st September, the mountain above-named, where the criminals of whom he was in pursuit had the audacity to offer resistance, and killed in the struggle that ensued Brevet-Lieutenant Kwoh Chu-pao and two men of the force. Tsiang Tsung-han led his troops in person to hem in and attack [the desperadoes], and despatched a picked force of officers and men of special daring, who, at daybreak on the morning of September 2, availing themselves of some relaxation in the vigilance of the defenders, effected the ascent of the hill by laying hold of the creeping plants with which it is overgrown, and hewed their way into the cavern. The malefactors whom they were in search of dashed away, letting themselves down over the face of the cliff to effect their escape; but four were killed on the spot, and eight were taken prisoners. Two ponies which had been ridden by Ma-kia-li (Mr. Margary), and plunder consisting in some forty or fifty articles of a miscellaneous kind, were recovered. The prisoners having been conveyed to T'eng-yüeh, the Acting Commander-in-chief had given orders to the Sub-Prefect, Wi-k'iliang, Lieutenant-Colonel Li-chên-kwoh, and Colonel Ho Yao-t'sêng, Commandant of the garrison of Yung-ch'ang, who had been specially appointed to expedite action in the matter, to escort in person the prisoners captured first and last, numbering fifteen in all, together with the ponies and articles recovered, to the provincial capital. They set out on the 18th September from Momein on their way to the provincial capital to await further proceedings.”

It has to be observed that, when in receipt on a former occasion of a report from Yünnan with reference to the Margary affair, communication of its purport was made to the British Minister, who replied, in a despatch received on the 28th August,† to the effect that “the transmission of so idle an explanation as that received from the Tsung-ping Yang and the Taotai Ch'ên is calculated to impair any confidence that might have been felt in the good faith of the Chinese Government;” observing further that “it is impossible for me to attach the smallest credit to the report of these two officers;” and again that the Prince, doubtless, intended the Report to be accepted “as credible, or it would not have been embodied in a despatch.”

Such being the case, all that the Yamên of Foreign Affairs could do was to await the receipt of a Memorial and Report from his Excellency the Commissioner Li, and to communicate it for the British Minister's information, feeling it not to be expedient to trouble him with the Reports forwarded by the Yünnan authorities themselves. Being now in receipt of the despatch under acknowledgment, they forward the statements above given, as received in October last. In respect of the ability of the prisoners to understand Chinese, or otherwise, the Yamên has no means of forming an opinion.

In reply, furthermore, to the question whether any further reports have been received from the High Commissioner, it has to be stated that on arriving in Yünnan, His Excellency Li memorialized, requesting as a preliminary step that the officials who had failed in the due discharge of their duty be stripped of their official rank. This Memorial has already been communicated to the British Minister. Anything in reports that may subsequently be laid before the Throne, which it is right should be brought to the knowledge of the British Minister, shall be communicated officially for his information.

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#### Inclosure 5 in No. 26.

*Sir T. Wade to the Prince of Kung.*

Sir,

*Peking, January 20, 1876.*

I BEG to acknowledge the note which I had the honour to receive from your Imperial Highness last evening, in reply to mine of the 15th instant.

Taking it with your Imperial Highness's earlier communications of the 17th and

\* This, there is reason to believe, is the officer better known as Li hsieh-t'ai.—W. F. M.

† N.B.—This despatch was dated the 21st August, 1875, but did not reach the Yamên until the 28th.



19th December, I shall for the moment confine myself to the expression of my regret that a question of the gravity of the Yünnan outrage should be so differently appreciated by the Chinese Government and my own, and should be, to all appearance, so far removed from a satisfactory solution.

I need hardly say that this is not my last word upon the subject. Her Majesty's Government, your Imperial Highness may rest assured, is determined not only that justice shall be done in the present instance, but that the security of the future shall be amply guaranteed.

I take the liberty of referring your Imperial Highness to the closing words of the telegram which, in accordance with the Earl of Derby's instructions, I communicated to your Imperial Highness in my note of the 22nd of October last. They are deserving of very serious attention.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure 6 in No. 26.

*Sir T. Wade to the Prince of Kung.*

Sir, Peking, January 24, 1876.  
ON the 22nd of October last I had the honour to inform your Imperial Highness of the receipt of a reply from the Earl of Derby to a telegram in which I had summarized the negotiations with your Imperial Highness that had been concluded before I left Peking on the 10th of October.

Copies of the correspondence recording the course of those negotiations were forwarded to his Lordship by the hand of Mr. Edwardes, Second Secretary of Legation, and were by him delivered to Lord Derby on the 12th December.

Having duly considered the papers in question, his Lordship has telegraphed to me, in a message dated the 5th instant, that my conduct is approved. He desires me further to state that the investigation in Yünnan is expected by Her Majesty's Government to be a *bond fide* proceeding, and carried out with vigour and earnestness; that Her Majesty's Government also looks for the performance of the other engagements reported by me in the same correspondence, as evidence of friendly spirit and straightforwardness of purpose.

My telegram reporting the publication of the Decree and Memorial, communicated to me in your Imperial Highness's note of the 10th of December, reached Shanghai only on the 3rd instant. Lord Derby had evidently not received it on the 5th.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

No. 27.

*Sir T. Wade to the Earl of Derby.—(Received March 25.)*

My Lord, Peking, January 26, 1876.  
I HAVE the honour to inclose translations of a Memorial from the High Commissioner Li-Han-ch'ang, and his colleague Sieh Huan, reporting that there is reason to suspect Li-hsieh-t'ai of being prime mover in the opposition to our entry into Yünnan, and of the Imperial Decree in reply. Both have appeared in the manuscript edition of the "Peking Gazette," but they have not yet been communicated to me by the Prince of Kung.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure in No. 27.

*Memorial and Decree on Yünnan Affair, published at Peking, January 24 and 25, 1876.*

LI-HAN-CHANG, Governor-General of Hu Kwang, Imperial Commissioner for an Inquiry in Yünnan; and Sieh Hwan, ex-Vice-President of a Board, Imperial Commissioner Adjoint for an Inquiry in Yünnan, on their knees represent that a clue has been obtained by investigation to the fact that an officer, lately holding an acting appointment as Captain, did

lay a plan for opposing the entry of foreigners into the country, and to request a Decree, in the first instance, stripping him of his rank, in order that he may be placed on trial.

Your servants have to state that, on being placed in possession of the depositions taken from the prisoners guilty of the murder of Ma Kia-li (Mr. Margary), they appointed additional delegates in the persons of the Taotai T'ing Sze-pin and the Prefect Tsiang Sih-hün, to co-operate with the Financial and Judicial Commissioners of the Province in subjecting the prisoners to rigorous examination. All that the prisoners confessed was that they had committed robbery [and that], owing to a foreigner, (or the foreigners) having discharged a pistol-shot which killed one of their accomplices named A Yung, they then and there resolved to resist apprehension, and murdered Ma Kia-li and his four attendants. They firmly refused, however, to confess who had been their instigator.

Wu K'i-liang, for his part, also affirmed that he knew nothing of this affair, and had no share in planning what took place. Li Chên-Kwoh returned the most absolute denial to the statements made in Wei T'o-ma's despatch,\* and it was not until he had been subjected to repeated cross-examination that he uttered a statement to the effect that "in the 12th moon of last year (January, 1875) the notables of the sub-Prefecture of T'êng-yüeh (Momein), on learning that foreigners were about to come forward at the head of a large body of troops, and fearing that they would commit disorders, raised a force of local train-bands for the protection of their own lives and property [of which he], had communicated an intimation." †

The circumstances thus indicated are sufficient in themselves to warrant suspicion; and, coincidentally, the Brigadier-General of the Sui-ting command, Li Shêng, who was sent forward by your servant Li Han-chang, whilst on his journey, to proceed to T'êng-yüeh, and make inquiries there privately, having returned to the provincial capital, reports as follows:—"That the murder of Ma Kia-li came of the act of lawless offenders who offered resistance to capture for the commission of robbery, ‡ and who secretly gathered together their confederates to obstruct the progress of the foreigners, and prevent them from entering the country.

"[Farther] that, according to common report along the roads, all this was done by Li Chên-Kwoh; but that at the time Ma Kia-li was murdered, Li Chên-Kwoh was not on the spot, nor were any soldiers concerned in the affair."

It appears from the correspondence forming part of the case, that in the 3rd moon of this year (April 6th to May 4th, 1875), the Governor, your servant Ts'ên Yü-ying, received a report from Li Chên-kwoh [forwarding] two official letters addressed to him (Li) on separate occasions by the notables of T'êng-yüeh; and, in this report, there unquestionably appears a statement on the part of Li Chên-kwoh that [he is] "taking vigorous and active precautionary measures with the view of stoutly defending the region under his care." Although Ts'ên Yü-ying wrote commanding him to quiet the people, and prevent any action on their part (*lit.* quiet, or appease and obstruct the people), and allow no unfounded alarm to spread, yet this was after the affair had already taken place, and it was too late.

It appears from this, consequently, that although Li Chên-kwoh had no intention to commit murder, he is liable to a charge of having laid plans to obstruct [the Expedition]; and your servants have agreed, after taking counsel together, that he should not be suffered to take advantage of his official rank as a cover for lying evasions, gaining time with false statements in dread of incurring punishment. They think it their duty to solicit a rescript, in the first instance, stripping of his rank Li Chên-kwoh, a Colonel by brevet, on the list for immediate employment as Lieutenant-Colonel, late acting in the post of Captain Commandant of of Nan-tien. [They propose to] bring him up together with Wu K'i-liang, the officer now already degraded from the rank of sub-Prefect, and to order Tsiang Tsung-hau, now already degraded from the rank of Brigadier-General, to be brought without a day's delay to the provincial capital, in order that they may be rigorously examined, as circumstances may require, to the end that the demands of justice may be fulfilled. They accordingly join with your servant Ts'ên Yü-ying, Governor and acting Governor-General, in laying this Memorial before the sacred glance of your Majesties the Empresses and your Majesty the Emperor.

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To the above Memorial the following Decree was issued on the 24th January, 1876:—

\* Mr. Wade's despatch of the 20th August, in which he stated what had been reported with reference to Li-hsieh-t'ai.

† As in the Decree, the phrase is obscure, both as to the matter communicated, and the person communicated with.

‡ The original is so obscurely worded as to convey no definite idea of time, manner, place, or object of the action indicated.



Li Han-chang and his colleagues have memorialized us requesting that an officer who has vacated the acting appointment of tu-size (captain) be stripped of his official rank, and included among the number of the persons about to be arraigned for the purposes of a judicial enquiry. It has been deposed by Li Chên-kwoh,\* lately acting as Captain in command at Mantien, in the proceedings relating to the murder of Ma Kia-li, that the notables of the T'êng-Yüeh (Momein) jurisdiction, having heard that foreigners were coming in that direction, at the head of a large body of troops, collected train-bands for the protection of their persons and property; [and that he] had communicated an intimation.† [Such being the statement made], it is most necessary that a searching investigation be at once instituted, in order to ascertain whether any further circumstances are involved. We command that Li Chên-kwoh be forthwith stripped of his rank, and handed over to Li Han-chang and his colleagues, to be arraigned together with Tsiang Tsung-hau and Wu K'i-liang, the Brigadier-General and Sub-Préfect heretofore degraded, and subjected as circumstances may render necessary to stringent judicial examination, in order that the demands of justice be fulfilled. Let the Yamên concerned take note.

(Signed) W. F. MAYERS.

No. 28.

*Sir T. Wade to the Earl of Derby.—(Received March 25.)*

My Lord,

*Peking, January 26, 1876.*

IT will be seen that when I brought the Yünnan outrage to the notice of the Chinese Government last March, an Imperial decree was issued directing Liu Yo-chao, Governor-General of Yünnan and Kwei Chou, then absent on leave, to return to his post with all speed. This order, for reasons of his own, he did not obey, and he was in consequence deprived of his office on the 3rd December, and replaced by Liu Chang-yu, Governor of Kuang Si. The latter officer bears a very high character. He was Governor-General of the Two Kuang in 1862, and was translated, in time of need, to this province; but, being poor and clean-handed, he did not long remain here. After his fall for some formal offence, he was reinstated as Governor of Kuang Si. I looked on his appointment at this crisis as of good omen in Yünnan.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

No. 29.

*Sir T. Wade to the Earl of Derby.—(Received April 8.)*

My Lord,

*Peking, February 2, 1876.*

IN my despatch of the 26th January, I had the honour to forward translation of a Memorial and Decree upon the Yünnan affair, which had appeared in the manuscript edition of the "Peking Gazette." The printed edition generally contains the decrees the day after the manuscript has appeared. The memorials are not published in print for some ten days later. In cases like the present, the Prince of Kung communicates papers issued for publication in an official note. His Imperial Highness pursued this course in the present instance, and, as there are in the copy so communicated words that did not appear in the text from which the translation, forwarded to your Lordship, was made, I beg to inclose a second translation. The additions in the authenticated document do nothing to remove any objection to it as a most unsatisfactory paper.

Nothing can be clearer than a Chinese official report, when there is no purpose to be served by concealment or evasions. That authorities in the position of the high officers memorializing, should be after ten months no nearer the facts than they represent themselves to be is, in China, simply incredible. Equally incredible is it that, ten months after an event which may possibly produce a rupture between England and China, the Central Government should have had transmitted to it no fuller information than that before us.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

\* This is the officer better known as Li-hsieh-t'ai, or Leeseetahee.

† The elliptical conciseness of the quotation leaves the matter communicated, and the recipient of the intimation, subject to doubt.

## Inclosure 1 in No. 29.

*The Prince of Kung to Sir T. Wade.*

(Translation.)

*Peking, January 27, 1876.*

THE Prince was on the point of replying to the British Minister's despatch of the 20th instant, wherein his attention is requested [to the closing words of the telegram communicated to him on the 22nd October last], when, on the 24th instant, he received a second note from the British Minister, stating that he had communicated to Her Majesty's Government [the negotiations concluded with the Prince before the British Minister left Peking, on the 10th October last], and adding that Lord Derby, when writing [had evidently not received the British Minister's telegram reporting the publication of the Decree and Memorial of the 9th December.]

The Prince has made himself acquainted with the contents of these notes, and having now received from the Grand Council a memorial submitted by Li Han-chang and his colleagues, praying that Li Chên-kwoh, lately holding an acting appointment as Captain, be stripped of his office and placed on his trial, and also the Imperial Decree [based thereon], the Prince deems it his duty to communicate to the British Minister a copy of the Decree reverently made, and a copy of the Memorial.

## Inclosure 2 in No. 29.

*Amended Translation of Memorial relating to the Inquiry in Yünnan.\**

LI Han-chang, Governor-General of Hu Kwang, Imperial Commissioner for an inquiry in Yünnan, and Sieh Hwan, ex-Vice-President of a Board, Imperial Commissioner-adjoint for an inquiry in Yünnan, kneeling, represent that a clue has been obtained by an investigation to the fact that an officer, lately holding an acting appointment as captain, did lay a plan for opposing the entry of foreigners into the country, and request a Decree in the first instance, stripping him of his rank, in order that he may be placed on trial.

Your servants have to state that, on *finding manifest falsehoods and suppressions* in the depositions taken from the prisoners guilty of the murder of Ma Kia-li (Mr. Margary), *and the depositions of the sub-prefect, Wu K'i-liang, and of Captain Li Chên-Kwoh, handed in by themselves, they, on the one hand, commissioned the officials, who were placed by Decree upon their staff, to take measures for eliciting the actual facts, as they have reported in their Memorial dated the 1st of the 12th Moon (November 28, 1875),* and subsequently appointed additional delegates in the persons of the Taotai Ting Sze-pin and the Prefect, Sih-hün, to co-operate with the Financial and Judicial Commissioners of the province in subjecting the prisoners to rigorous examination. All that the prisoners confessed was that they had committed robbery, (and that) owing to a foreigner (or the foreigners) having discharged a pistol shot, which killed one of their accomplices named A Yung, they then and there resolved to resist apprehension, and murdered Ma Kia-li and his four attendants. They firmly refused, however, to confess who had been their instigator. Wu K'i-liang, for his part, also affirmed that he neither knew aught of the affair, nor had any share in planning what took place. Li Chên-Kwoh returned the most absolute denial to the statements made in Wei T'o-ma's despatch,† and it was not until he had been subjected to repeated cross-examination that he uttered a statement to the effect that "in the 12th Moon of last year (January, 1875), the notables of the Sub-Prefecture of T'êng-yüeh (Momein), on learning that foreigners were about to come forward at the head of a large body of troops, and fearing that they would commit disorders, raised a force of local train-bands for the protection of their own lives and property, (of which *they*) had communicated an intimation to *him*."

The circumstances thus indicated are sufficient in themselves to warrant suspicion; and, coincidently, the Brigadier-General, Li Shêng, of the Sui-tsing command, who was sent forward by your servant, Li Han-chang, whilst on his journey, to proceed to T'eng-

\* The translation forwarded to the Earl of Derby in Sir T. Wade's No. 25 of January 25, 1876, was made from the version issued in the MS. copy of the "Peking Gazette." On comparing this with the copy officially forwarded by the Prince of Kung in his despatch of the 27th January, the omission of an entire paragraph and several clerical errors have been discovered, rendering a fresh translation necessary. A doubtful passage has also been submitted to the Ministers of the Yamén for explanation. Corrections now made are shown in red ink [in italics].

† Mr. Wade's despatch of the 20th August, in which he stated what had been reported with reference to Li-hsieh-t'ai.



Yüeh and make inquiries there privately, having returned to the provincial capital, reports as follows, viz., "that the murder of Ma Kia-li came of the act of lawless offenders who offered resistance to capture for the commission of robbery,\* *but that, according to common report along the roads, the secret instigation of the lawless savages to obstruct the progress of the foreigners and prevent them from entering the country was the act of Li Chén-Kwoh, who, however, at the same time Ma Kia-li was murdered, was not on the spot, nor were any soldiers concerned in the affair.*" It appears from the correspondence forming part of the case that—

[From this point onward the text is the same in the Prince's despatch with that issued in the Manuscript Gazette, and no alteration of the translation is necessary.]

(Signed) W. F. MAYERS, *Chinese Secretary.*

No. 30.

*Sir T. Wade to the Earl of Derby.—(Received April 8.)*

My Lord,

*Peking, February 2, 1876.*

I HAVE the honour to inclose copy of a paper of instructions with which I desired Mr. Mayers, the Chinese Secretary, to wait on the Ministers of the Yamên, upon the 30th January, also copy of Mr. Mayers's report of his interview with their Excellencies.

It is not worth while to follow the Ministers, step by step, through the series of fictions, puerilities, and prevarications, with which they are used, as in this instance, to sustain a controversy. I knew when I sent Mr. Mayers to the Yamên how little in the way of a practical result, except, perhaps, as regarded Corea, was to be looked for from the interview.

The representations, however, such as I instructed him to make, I conceive it my duty not to omit, and having made them, it is my duty to report them.

It may be at least one day important to show that the Chinese Government was duly warned against repetition of a favourite manœuvre, the publication, that is, without a word of notice to the foreign representative concerned, of a decision, which once pronounced, it will plead fifty formal difficulties in the way of modifying. This was the course pursued in the instances to which my instructions of the 30th January alluded, whatever the Ministers who received Mr. Mayers may affirm to the contrary; and this, to a certain extent, is the course so far pursued in dealing with the Yünnan atrocity. By the first Memorial of the High Commissioners (see my despatch of the 15th December, 1875, Inclosure 3), the Acting Governor-General, Ts'ên Yü-ying, is intended to be cleared of the graver charge of having authorized the attack on Colonel Browne, by the Memorial (Inclosure in previous despatch of this date), Li Hsieh-tai, though possibly to be convicted of suggesting this attack, is to be cleared of the murder, which it will be attempted to fasten on border savages who, as they do not speak Chinese, cannot well be cross-examined.

Anticipation of the verdict, I admit, puts in question any judicial fairness, but, my own experience of Chinese officials apart, I know no Chinese, not official, with whom I am in contact, who views the proceedings in Yünnan otherwise than I do.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

P.S.—I beg to add copy of a note which I thought it well to write to the Prince of Kung when sending Mr. Mayers to the Yamên.

T. F. W.

Inclosure 1 in No. 30.

*Memorandum of Instructions to Mr. Mayers.*

*January 30, 1876.*

MR. MAYERS will take with him to the Yamên the Prince of Kung's note to me of the 27th instant, in which were inclosed copies of the last Memorial received from the High Commissioner Li and his Colleagues, and of the Imperial Decree issued in reply on

\* The original is here so obscurely worded as to convey no definite idea of time, manner, place, or object of the action indicated.

the 24th, also my reply to that note, of this date, also the correspondence between Mr. Medhurst and the Taotai Fêng, regarding the families of the Chinese murdered at the same time as Mr. Margary. Mr. Mayers will also have with him the Prince's despatch of the 4th March, 1872, inclosing copy of the Memorial from the Yamên on the better observance of the Treaty.

Mr. Mayers will request the Ministers who receive him to explain the meaning of the passage in which the words "t'ung hsin" (communicate intelligence) occur. What was the intelligence and to whom communicated, and he will take down in writing the explanation of their Excellencies. Mr. Mayers will hand to their Excellencies the note I have written to the Prince, in which I state that I do not propose to trouble His Imperial Highness at greater length at present, and he will draw attention to the words in which I have expressed myself to that effect. He will at the same time add that, while for the moment I purposely abstain from further discussion of the story sent up from Yünnan, in respect of its credibility, I feel it my duty to remark on one or two particulars on the manner in which the intelligence from Yünnan is now being presented by the Chinese Government to the people.

After a silence of several months the Government is discovering a singular eagerness to publish the reports sent up from Yünnan. These reports I have pointed out are by no means in accord with those I have received, the main portion of which I have communicated to the Chinese Government. On this, however, I repeat, I am not now about to dwell. The farther comparison of statements must be reserved until the investigation is nearer its conclusion. What is to be apprehended is this, that, as in the case of the Tien-tsin massacre of 1870, the issue of the Missionary Memorandum of 1871, the assault on myself in 1872, some document may be published to the world, or communicated to this Legation, as the last word of the Chinese Government, without any previous understanding with the Minister directly interested. It is, in my opinion, my duty to warn the Chinese Government that such a proceeding, unless the solution announced were eminently satisfactory, would but complicate a case the difficulties of which are, to all appearance, daily increasing.

If explanation of the last sentence be asked for, Mr. Mayers is to say that he is not authorized to enter into discussion of the treatment of this question by the Chinese Government, but that, when giving him his instructions, I explained to him that my words referred to the dilatoriness of the Chinese Government's proceeding in the first instance, the transparent untruthfulness of the reports sent up, the contradictions in the correspondence relating to it since my return to Peking, and the apparent anxiety of the Government to stop my mouth with the precipitate publication of reports which no Chinese to whom I have shown them affects to believe; to say nothing of the evidence in my hands.

Another point is the mention of my own name in the last published Memorial. I am perfectly prepared to be referred to the Yamên's Memorial of the 26th September, a large part of which is devoted to demonstrating that foreigners have no concern with forms of language that appear in correspondence between the Emperor of China and his Ministers. If China is in reality going to establish Missions abroad, her Government will soon learn that it is not considered courteous for any Government, in papers published by authority, to speak of foreign Representatives as if they were coolies. In the Memorial presented by the Yamên to the Throne in 1872, I objected, when the draft was shown to me, to the insertions of my name as "Wei To'ma," and it was withdrawn. I was spoken of as the Minister of the British Government. The words "British Government" ought not, as I have argued, to be placed in the body of the column, but the manner in which I am spoken of in the last Memorial of the Yünnan High Commission is even more offensive. I have not thought fit, after all that has passed, to make allusion to this in the note this day sent in, but it is my duty to the Government of Her Majesty the Queen, whose dignity is concerned when a slight is put upon her Representative, not to leave so manifest a discourtesy unnoticed.

I wish to recall, for the recollection of the Yamên, my intimation that Mr. Grosvenor and his party would return either by way of Birma or through China, as might prove convenient. I have received a telegram from the Indian Government to the effect that an escort will be ready to meet Mr. Grosvenor and his party at the boundary of Burma and China. I shall write to the Prince of Kung to request that the necessary instructions be given to the proper authorities in Yünnan on this subject. I shall at the same time forward a letter to Mr. Grosvenor, which I shall request may be transmitted to him with all speed. If not at Yünnan by this date he should be there in a few days.



## Inclosure 2 in No. 30.

*Memorandum of Interview with the Ministers of the Yamèn, January 30, 1876.*

ON the Ministers' attention being drawn to the observations made respecting the course taken by the Chinese Government in its publication of documents, &c., the Assistant Grand Secretary Shên demurred to the statement that in 1870, 1871, and 1872, Decrees or other documents (such as the Missionary Circular) had been published or circulated by the Chinese Government without reference to the opinion of the foreign Ministers concerned. In the Tien-tsin case M. de Rochechouart had been in direct communication with Tsêng Kwo-fan. The Missionary Circular of 1871 was primarily addressed to the French Minister, who, indeed, agreed to much that it contained, and was communicated to the British Minister at his request. It was never circulated in the provinces, but merely forwarded it by the Yamèn to the Ministers Superintendent at Tien-tsin and Nanking for their information. Mr. Mayers replied that, be this as it may, the Provincial Governments generally are known to have received copies of the Yamèn's Memorandum, and to have acted upon it as though it were established law. A case in point in Fuhkien was recalled to mind. Touching the affair of 1872, the Ministers Shên and Tung similarly contended that the action taken by the Yamèn was preceded by consultation with the British Minister. In the present instance, whilst perfectly comprehending the nature of Sir Thomas Wade's apprehension, his Excellency Shên had to reply that, so far as Memorials from the High Commissioner Li are concerned, it is certain that he will not formulate his Report before Mr. Grosvenor arrives in Yünnan, and that Mr. Grosvenor will be in a position to check whatever evidence is produced at the trial or reported by his Excellency Li. As for the purport of Decrees, no Minister dare speculate on their probable tenor.

Touching the mention of Sir Thomas Wade in the Memorial as simply "Wei T'o-ma," in precisely the same manner as the most ordinary person, without any semblance of respect or acknowledgment of the courtesy due to a foreign Representative, the Ministers generally defended this on the ground that it is the rule in Memorials to the Throne to speak of all individuals, be their rank what it may, by name as well as surname. This, Mr. Mayers replied, may be the case with subjects of the Emperor, though even here the rank of the official is denoted by his proper title, but the Representative of a foreign Sovereign stands in a different category. His Excellency Ch'ungchow upon this took up the subject, addressing himself rather to the Assistant Grand Secretary Shên, as explaining the matter to him; and whilst repeating that the memorialist in Yünnan was only following the rule which applies in such cases where Chinese subjects are concerned, though it must be admitted that there was some remissness in speaking thus of a foreign Minister. His Excellency Mao volunteered the observation that the person who drafted the Memorial did not know any better, upon which Mr. Mayers asked from whence, pray, did he obtain the two characters "T'o-ma," in Sir T. Wade's Chinese name, which certainly do not appear in the official correspondence? His Excellency Shên seemed for an instant disconcerted by this observation, but quickly rejoined: "Ah! it is easy to see that you suspect the Yamèn of having called the British Minister 'Wei T'o-ma' in their despatches to his Excellency Li; but you may rest assured they have done nothing of the kind."

His Excellency Tung interposed, remarking that, for his part, Sir T. Wade might describe him in any way he chose in his reports to his own Government without causing him any displeasure.

On his attention being called to the concluding paragraph of Sir T. Wade's remarks on the subject, his Excellency exclaimed: "This is giving still a wider scope to the subject." Mr. Mayers replied that it was as a want of respect for the Sovereign whom Sir T. Wade represents that the question was brought to the Ministers' notice. They were further reminded of the designation properly applied to the British Minister in the Memorial of 1872, which was laid before them; and they were asked how it was that such ignorance of what is fitting, as they plead in justification of the expression contained in the Yünnan Memorial, should possibly exist.

(Signed)

W. F. MAYERS, *Chinese Secretary.*

## Inclosure 3 in No. 30.

*Sir T. Wade to the Prince of Kung.*

Sir,

*Peking, January 30, 1876.*

I HAVE the honour to acknowledge the receipt of your Imperial Highness' note of the 27th instant, inclosing copies of a Memorial and Decree upon the subject of the Yünnan atrocity, which I had already perused in the manuscript edition of the "Peking Gazette."

There is a passage in these papers which I do not perfectly understand, and which, consequently, I have instructed Mr. Mayers, the Chinese Secretary, to request their Excellencies the Ministers of the Yamên to explain.

I do not propose, for the present, to trouble your Imperial Highness regarding them further than with the intimation that translations of them will be forwarded, as a matter of course, to the Earl of Derby.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

## No. 31.

*Sir T. Wade to the Earl of Derby.—(Received April 8.)*

My Lord,

*Peking, February 3, 1876.*

IN my despatch of the 2nd instant, I adverted to a conversation between Mr. Hart and the Envoy-Designate Kuo Sung-tao. The Envoy was paying Mr. Hart a visit at the time of the China New Year, and congratulated him on the completion of his Report on the taxation of foreign trade, which he had been enabled to send in just before the New Year (26th January).

His Excellency Kuo himself, by his own account, heartily approves Mr. Hart's scheme of amendment, with the particulars of which, I may observe, I am as yet unacquainted. Having expressed himself in this sense, he went on to deplore the want of initiative which distinguishes the Central Government. This, as your Lordship is aware, is almost identical with the Tsung-li Yamên, four of the five Members of the Great Council, which is really the fountain of authority, being Members of the Yamên. Some of Mr. Hart's propositions, it appears, will be difficult of acceptance, because they will clash with the collection of the li-kin or trade tax; against which, however, it should not be forgotten that censors are continually supporting the complaints of the native mercantile class.

The Central Government has taken no decision on Mr. Hart's Memorandum, but has sent it to the Provinces, the Governments of which, says the Envoy Kuo, will not understand its merits, and will put forward objections that will most likely involve serious modifications.

He went on from this to the Yünnan affair. He would be ashamed, he said, to go to England, until this was settled. What did I think, asked the Envoy, of the Memorials and Decrees that have been appearing in the "Peking Gazette."

On being told that, I was much dissatisfied, he replied that so was he. He fully admitted that by proper management an early settlement of the affair might have been arranged, and that every day's delay was adding to the difficulty of a satisfactory arrangement.

He also shared my apprehension that by some ill-considered declaration, the Chinese Government might commit itself beyond recall.

The Envoy next adverted to Corea, to the state of relations between China and which country Mr. Hart had been referring as calculated to add to the embarrassments of China.

His Excellency declared that he thought the policy of China entirely wrong in regard to Corea. He would himself, he said, have accepted the responsibility of Corea in the quarrel with Japan, and have opened the country to all nations. He repeated what is known to be the opinion of himself, and a few others, that the proper course for China to pursue, is the improvement of intercourse with foreign nations, and not the provision of means, materially, of defence against them; which latter is the course at this present moment most in vogue with her politicians.

Mr. Hart, it seems, at the time that the occupation of Formosa by Japan, was the matter of nearest concernment in 1874, had submitted to the Tsung-li Yamên, a paper of



suggestions regarding means of defence in time to come. Referring to this, his Excellency Kuo observed that China was not ready for so much of effective organization as Mr. Hart's Memorandum of 1874 would involve. He would rather support the propositions just now submitted, which are in the direction of an expansion of commercial, consequently of pacific intercourse.

Mr. Hart, who sees him to great advantage, has formed a high opinion of the Envoy Kuo, as a man of honesty, clearness of sight, and determination; and this without forgetting that the Envoy is always a Chinese, and that the chief purpose of his confidence is probably to obtain light as to the conduct of the Yünnan affair. On the other side, we must not forget the remarkable line taken by the Envoy Kuo in 1859, when, as I have already mentioned, he denounced Prince Têngkolinsin for having opened fire upon us; nor the character that has clung to him of being an original and determined man. His colleague, the Envoy Hsü, who is of a very different type, implies that this is his character, and more or less censoriously; for there is evidently no love lost between them. The Minister Ch'unghou told Mr. Hart that the Grand Secretary Wenti'ang differs materially from the Envoy Kuo in opinion, but respects his tenacity.

It is remarkable that in the conversation with Mr. Hart, which forms the subject of this despatch, the Envoy Kuo seemed unaware that I had instructed Mr. Grosvenor to go to Momein. This of course may have been a pretence of ignorance. Otherwise it would seem that all the Members of the Yamên are not for certain made acquainted with all the correspondence on certain subjects.

It will be remembered that there was an instance of this division of parties within the Yamên during the final discussion of the Formosan question in 1874.

I record matter such as this despatch is devoted to, because I conceive that it will possibly contribute towards the formation of a decision in the grave question which necessarily absorbs me; also, because it bears with more or less advantage upon a knowledge of the Minister who is about to represent China in England.

I trust that these considerations may excuse the length of my observations.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

#### No. 32.

*The Secretary to the Admiralty to Lord Tenterden.—(Received April 12.)*

Sir,

*Admiralty, April 12, 1876.*

I AM commanded by my Lords Commissioners of the Admiralty to acquaint you, for the information of the Earl of Derby, that a telegram has been received from the Commander-in-chief in China, reporting the arrival of the four frigates of the detached squadron at Hong Kong,\* and that, in compliance with the wishes of Her Majesty's Minister, they would proceed in about a fortnight to Shanghae.

I am, &c.

(Signed) ROBERT HALL.

#### No. 33.

*Sir T. Wade to the Earl of Derby.—(Received April 15.)*

(Telegraphic.)

*Peking, April 3, 1876.*

THE Mission, from a letter received to-day from the Secretary, appears to have arrived on the 6th ultimo at the Provincial Capital, all the members of it being well, and satisfied with the manner in which they had been treated during their journey.

My instructions to the Secretary, of which I forwarded a copy in my despatch of the 16th of December, had been received by him, as well as the English translation of my letter to the High Commissioner Li.

*Consul Alabaster to the Earl of Derby.—(Received April 18.)*

My Lord,

*Hankow, February 19, 1876.*

I HAVE the honour to forward, herewith, a copy of a despatch I have addressed to Her Majesty's Minister at Peking, reporting the arrival of Mr. Grosvenor's mission at Hsü Chow Fu, about 300 miles beyond Chung King.

I have, &c.  
(Signed) CHAS. ALABASTER.

Inclosure in No. 34.

*Consul Alabaster to Sir T. Wade.*

Sir,

*Hankow, February 19, 1876.*

I HAVE the honour to report that I have just learnt from the Taotai that he has indirectly heard of the arrival of Mr. Grosvenor and party at Hsü Chow Fu, about 300 miles beyond Chung King.

They had determined to proceed by a different route than ordinarily taken, and would probably, therefore, not reach Yünnan Fu till the end of this month, and, while on the way, it will be uncertain when we shall hear from them.

The report of their arrival at Yünnan Fu should reach Hankow about twenty days from their reaching that city.

I have, &c.  
(Signed) CHAS. ALABASTER.

No. 35.

*Sir T. Wade to the Earl of Derby.—(Received April 24.)*

My Lord,

*Peking, February 23, 1876.*

AS my telegram of the 16th instant will have informed your Lordship, I had received from the High Commissioner Li, and, I should have added, his colleague Hsüeh, or Sieh, a note dated 29th January.

I have the honour to inclose translation of this note, with copy of my reply to it of this date: also copy of a despatch to Mr. Grosvenor, which the Tsung-li Yamên has promised should be sent to him; copies also of two notes to the Prince of Kung, the one transmitting to His Imperial Highness's care my despatch to Mr. Grosvenor, the other my note to the High Commissioners. The letter is separate, as it has appended to it copy of this note, the object of which I am specially anxious that the Prince should understand.

Mr. Mayers was at the Yamên again to-day, when the Ministers repeated the statement made a few days ago, namely, that since the High Commissioners' last Memorial they had had nothing from Yünnan. The High Commissioners' note was formally addressed to me in an official cover, but that, when forwarding it, their Excellencies should have made no further communication to the Yamên is as incredible as the assertion that the Yamên has no details respecting the Yünnan affair except those given in the two Memorials already published, translations of which have been forwarded to your Lordship. The note to my address, I have the best reason for believing, lay two days at the Yamên before it was sent to me.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure 1 in No. 35.

*Commissioner Li Han-chang to Sir T. Wade.*

(Translation.)

*Yünnan Fu, January 29, 1876.*

THE writer had the satisfaction, in the early part of last summer, of at length enjoying a conversation with the British Minister on his visit to Hu Peh, and he has not ceased ever since to regret the slight degree of attention it was in his power to show at



that time. He has now to acknowledge the receipt of the British Minister's note of the 15th December, which reached him on the 28th instant, and in which a copy was inclosed of the note previously addressed to him in October last from Shanghae.

On perusal of this communication he would observe that [the conduct of] the officials and people of Yünnan, in failing to afford protection to the British officers who came forward from the side of Burmah provided with passports, and thus leading to the murder of Mr. Margary and the obstruction of Colonel Browne, was indeed most wrong and reprehensible (or, altogether outside of what is right). Having been commissioned by His Majesty to institute inquiry and take action in this matter, were the writer to do otherwise than prosecute the investigation in the most earnest and searching manner, he would fail in responding not only to the desire which actuates his own Government to consolidate with all care its international relations, but also to the purpose which the British Minister cherishes of drawing closer the bonds of harmony between friendly States. With these considerations in view, he has sought for information along the line of his journey since setting out from Hu Peh, and besides this, he has dispatched emissaries to proceed in disguise to the scene of the disaster, for the purpose of making secret inquiries. He wrote, in addition, to the Acting Governor-General Ts'en, desiring him to have the guilty parties and witnesses apprehended and brought up for trial. On reaching Yünnan he appointed capable delegates to conduct the examination with all needful stringency, and [caused], first and last, the civil and military functionaries [implicated in] the affair to be stripped of their rank and placed on trial, holding it imperatively requisite that the actual truth be elicited, to the end that the demands of justice be satisfactorily attained.

The British Minister observes, in his note now under acknowledgment, that what "is essential is that there should be no doubt as to the identity of persons who may be brought to trial on the credit of statements that may be made, either for the prosecution or the defence." This is a remark which proves how thoroughly the British Minister appreciates the principles which should govern affairs, and the writer cannot feel otherwise than gratified by its expression.

The prisoners who have at present been brought before the Court, have made distinct confessions, of the truth of which there can be no doubt; whilst, with regard to the circumstances affecting the civil and military officials who have been stripped of their rank, depositions are at this moment in process of being taken. On Mr. Grosvenor's arrival, now shortly to be expected at Yünnan Fu, so soon as he shall have been present as a spectator of the proceedings [the case] will assuredly be made perfectly distinct [or, intelligible]. The British Minister may feel assured that, when the time arrives, attention shall be paid to his expressed wish, that while a Memorial is, on the one hand, laid before the Throne by the writer, a report shall be made, on the other, by Mr. Grosvenor to the British Minister; [after which], on a decision being arrived at in consultation, the penalty of justice shall in each case be carried into effect according to law.

As regards Mr. Grosvenor's future movements, the writer will lay strict injunctions upon the local authorities to afford him protection upon his journey, by whatever route he may shape his course; and, during his stay in Yünnan, he shall receive entire protection and support at the writer's hands. He has no doubt that Mr. Grosvenor [will] discuss affairs [with him] in a spirit of equity [and this being the case], it will of course be possible to unite in the fullest and most friendly efforts towards the arrangements to be discussed, in no wise failing in the due estimation [of all that has to be considered].

The letter forwarded for delivery to Mr. Grosvenor shall be handed to him in person. Mr. Grosvenor has already written a note, which was received in the course of last month, to mention that he has dispatched some stores from Shanghae to be forwarded via Bhamo to Yünnan; and the writer has sent an officer for the special purpose of proceeding to meet and take charge of the package. He would add that, according to letters from Sze Chuan, Mr. Grosvenor set out from Ch'ungk'ing Fu on the 3rd January, so that his arrival here may be looked for within the next few days; and he takes the opportunity of expressing his wishes for the British Minister's prosperity.

P.S.—It will be satisfactory to the British Minister to know that in the month of September last, the Vice-President Sieh received His Majesty's commands to proceed to Yünnan to assist in the pending proceedings, and that he is now co-operating in the consultations and action in progress. He incloses his cards with compliments.

## Inclosure 2 in No. 35.

*Sir T. Wade to the High Commissioners Li and Sieh.**Peking, February 23, 1876.*

SIR THOMAS WADE presents his compliments to their Excellencies Li and Sieh, High Commissioners. He begs to thank the High Commissioners for their note dated 29th January.

Sir Thomas Wade assumes that Mr. Grosvenor will ere this have arrived at Yünnan Fu. His instructions are to return by way of Manwyne, through Burmah, and the Government of India has already sent an escort to Bhamo to wait until it is required. As soon as the Agent of the Government of India is apprised of Mr. Grosvenor's approach, the escort will advance to the frontier to receive Mr. Grosvenor.

Their Excellencies are hereby informed of this arrangement, in order to render all misunderstanding on the subject of foreign escorts impossible.

Compliments,  
(Signed) THOMAS FRANCIS WADE.

## Inclosure 3 in No. 35.

*Sir T. Wade to Mr. Grosvenor.*

Sir,

*Peking, February 23, 1876.*

ON the 15th instant the Tsung-li Yamên forwarded me a note to my address from the High Commissioner Li Han-ch'ang and his colleague, the ex Vice-President Sieh. I inclose copy of this paper in original and translation.

In earlier despatches, which I hope may have reached you, I have informed you that the nomination of the ex-Vice-President Sieh as the colleague of the Governor-General Li, though the Decree so associating him with the latter high officer was issued on the 7th September, was not made known to me until three months had passed, and then indirectly, that is to say, by communication of a Memorial sent up by the High Commission, in which the appointment was noticed. The Acting Governor-General Ts'ên Yü-ying, whose sins of commission or omission it was one of the ostensible duties of his Excellency Li to investigate, was also joined with the memorialists in the representation referred to. The purport of this Memorial was to the effect that the people of the Momein jurisdiction, being alarmed by the rumoured approach of a foreign force, had called out the militia, and that bad characters, apparently Chinese, had profited by this circumstance to join the frontier tribes in an attack on Colonel Browne's party.

The information in my possession forbids me, as you are aware, to accept any statement so absurd, and the antecedents of the ex-Vice-President Sieh, whether as a Minister of the Tsung-li Yamên or otherwise, are not favourable to the conclusion that, in appointing him to the Commission, the Chinese Government was determined to act fairly by this unfortunate case. I have written all this in my despatch dated 14th December, which was forwarded to you in triplicate; but as this may not have reached you, I have here repeated briefly the opinions I therein stated. I repeat at the same time my instructions, to the effect that you are to make your stay at Yünnan Fu as short as possible; that if a respectable number of witnesses be produced at that city, you are to instruct your deputies to hear what they have to say, and, should their evidence be greatly at variance with that I have made known to you, to confine yourself to pointing out the discrepancy, and then, insisting always on my injunction that no one condemned in the proceedings is to be put to death till the Tsung-li Yamên and the Legation shall have been communicated with, to prepare a plain report, copy of which, without debate, you are to apply to the High Commissioners to send on to me. If the authorities insist on torturing any witness, your deputies are to protest and withdraw. His Excellency Li is farther to be requested to secure the safe passage of yourself and your whole party to Manwyne; and thence, when Mr. Margary's remains have been recovered, and any inquiry you may see fit to institute on the spot completed, to the frontier, where you will be met by the escort which by orders of the Government of India is now waiting for you at Bhamo. The Tsung-li Yamên has been informed that the escort in question is at Bhamo, and I am writing myself to his Excellency Li in the same sense, in order that there may be, in this instance, no pretext of misunderstanding possible.

You will, of course, do all that in you lies to keep the Agent of the Indian Government at Bhamo informed of your movements; and you will be careful not to separate



your party from the Chinese escort which, as the High Commissioner has promised in your note, shall be furnished you, until you find yourself in the presence of the escort sent from Bhamo to meet you.

Yours, &c.  
(Signed) THOMAS FRANCIS WADE.

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Inclosure 4 in No. 35.

*Sir T. Wade to the Prince of Kung.*

Sir, *Peking, February 23, 1876.*  
I HAVE the honour to inclose herewith to your Imperial Highness the despatch addressed to the Honourable Mr. Grosvenor, which I desired Mr. Mayers, on the 17th instant, to request their Excellencies, the Ministers of the Yamên, to be so good as to have transmitted to Yünnan, and I shall be obliged by its being forwarded to its address.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

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Inclosure 5 in No. 35.

*Sir T. Wade to the Prince of Kung.*

Sir, *Peking, February 23, 1876.*  
ON the 30th January, Mr. Mayers, by my desire, informed the Ministers of the Tsung-li Yamên, that the Government of India had sent an escort to Bhamo, with orders to await intelligence of Mr. Grosvenor's approach at that station.

I have the honour to inclose a note, in which I have communicated this intelligence to the High Commissioner Li, and his colleague, the High Commissioner Sich, and which I shall be obliged to your Imperial Highness to cause to be forwarded to their Excellencies.

A copy of the note in question is appended, for your Imperial Highness' information.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

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No. 36.

*Sir T. Wade to the Earl of Derby.—(Received April 24.)*

My Lord, *Peking, February 24, 1876.*  
IN continuation of my despatch of the 2nd instant, I have the honour to forward copy of a Memorandum, the substance of which, by my desire, Mr. Mayers has communicated to the Ministers of the Yamên; also copy of his Report. The papers form part of the history of the Yünnan case, and may have hereafter to be referred to. There is nothing in them that, for the moment, calls for special remark.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

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Inclosure 1 in No. 36.

*Instructions to Mr. Mayers.*

*February 17, 1876.*

MR. MAYERS is to state to the Ministers who may receive him at the Yamên, that the object of his visit is twofold.

First, I have received the note their Excellencies were so good as to forward me from the High Commissioner Li Han-chang. I presume that his Excellency has sent up some further Report of his proceedings in Yünnan; and I shall be obliged by a communication of its substance, if communication of the Report *in extenso* be not possible.

Next, I wish Mr. Mayers to explain the remark which their Excellencies appear to have misunderstood the other day (30th January), with reference to the premature publication of matter, or the adoption of any particular course of proceeding, without previous consultation with myself.

The incident of 1870, to which I referred, was not the publication of papers by Tsêng Chung-t'ang. His Memorial spoke the truth, and was honourable to him in every way. The action I referred to, was that taken in Peking after the Chargé d'Affaires of France had returned to Peking.

Again, in 1871, the paper known as the Missionary Memorandum, had not been communicated to foreign Representatives in general. The only two who had seen it were myself and the then Minister of Russia. I knew that it would give offence, and defeat its purpose; and, as the Grand Secretary, Wênsiang was aware, I had arranged to offer some suggestions regarding it; but it was hurried out, and the result was what I had anticipated. The first sentence of my note subsequently written to the Grand Secretary Wênsiang (21st June, 1871), establishes this.

The case of 1872 may be told in a few words. The condition on which I insisted as important, was that the title of Her Majesty the Queen should be placed on a level with that of the Emperor of China, in the Memorial published in the "Gazette." In the manuscript edition of the "Gazette" this condition was fulfilled; but in the printed edition which makes the round of the Empire, it was violated; the Yamên declining all responsibility, and as an *amende*, unable to do more than cause the reprint of 117 copies of a particular edition.

It is impossible to describe proceedings of this sort, otherwise than as manœuvres; and the Ministers of the Yamên must perceive that if these be resorted to on one side in a discussion, they become equally justifiable on the other.

A letter will be ready to-morrow to be despatched to Mr. Grosvenor, who ought to have arrived at Yünnan some days ago.

I observe that Yang Yü-k'o, late Acting Commander-in-chief of Yünnan, has been moved to Kuang Si. I should like to be informed of the reason of this, as his evidence will be more than possibly required at Yünnan Fu. I should also like to know what is become of Po-ch'ang, who was acting in the same capacity at Ta-li Fu, in December, 1874.

(Signed) THOMAS FRANCIS WADE.

Inclosure 2 in No. 36.

*Memorandum of Interview with the Ministers of the Tsung-li Yamên.*

February 17, 1876.

MR. MAYERS saw the Ministers Shên, Tung, Mao, and Ch'unghow at the Yamên, in pursuance of Her Majesty's Minister's instructions of this date.

The Ministers' replies to the observations addressed to them were as follows, his Excellency Shên being the principal spokesman:—

No further communication relating to the Yünnan affair had been received from his Excellency Li, who is, of course, awaiting the arrival of Mr. Grosvenor in Yünnan. His Excellency had written about other matters. Anything which ought to be communicated to Sir Thomas Wade would be made known to him without delay.

The Ministers would with pleasure forward a letter for Mr. Grosvenor.

Respecting the three cases referred to by Sir Thomas Wade, the Ministers made no answer with reference to that of 1870.

As regards the Missionary Circular of 1871, they contended that it was communicated to the Foreign Legations in general at the direct request of the several Ministers, and then only in a consultative way.

Touching the Memorial of 1872, his Excellency maintained that the only fault had lain with the "Gazette" printers, who, with a carelessness they often display, had ignored the correct form in which the text of the Yamên's Memorial had acknowledged the due position to be attributed to the characters Ta Ying Kwo (Great Britain).

General Yang Yü-K'o, the Ministers stated, has been removed from his tenure of the acting command-in-chief in Yünnan merely in pursuance of the regulation that military officers above the rank of Lieutenant-Colonel should not serve in their native provinces.

This rule, which was necessarily disregarded during the rebellion and in the years immediately ensuing, is now about to be enforced by successive removals.

Of General Po-Ch'ang, who was to have left Yünnan for Peking last year, none of the Ministers knew anything whatever. They had not heard whether he had reached Peking, but they thought he could not have done so without their being aware of the fact.

(Signed) W. F. MAYERS, *Chinese Secretary.*



*Sir T. Wade to the Earl of Derby.—(Received April 24.)*

My Lord,

*Peking, February 24, 1876.*

I HAVE the honour to inclose Memorandum of a conversation between Mr. Hillier and his Excellency Hsü Ch'ien-shên, the junior Envoy-Designate. Mr. Hillier is a very promising speaker, and, I think, turned his opportunity to good account.

So far as the Yünnan outrage is concerned, the chief interest in what fell from the Envoy Hsü lies in his attempt to compare the massacre of Tien-tsin with the incident in Yünnan, if I may say so, to the disadvantage of the latter. He is a great chatterer, but, connected as he is, I am persuaded that he does not speak of the Yünnan affair without knowledge of the opinions held by the Chiefs of the Government; possibly not without their inspiration.

My line has been to insist upon it that the Yünnan atrocity is much graver than the Tien-tsin massacre, not only because the authorities, having been duly apprised of the dispatch of the mission from India, were more directly chargeable with neglect of due precaution, if not with active hostility, but because the Yünnan crime has, at an interval of but five years, succeeded the Tien-tsin massacre.

The increase of attention of the Chinese to foreign matters, as shown by the Envoy's allusion to the Tichborne case, &c., is noteworthy. So, on the other hand, is his observation that, in the Tien-tsin case, China had got off very cheap.

I have, &c.

(Signed) THOMAS FRANCIS WADE.

Inclosure in No. 37.

*Memorandum.*

I CALLED on Hsü ta jên this afternoon, and sat with him for nearly two hours. He was in a particularly talkative humour, and pressed me to stay on two or three occasions when I rose to take leave.

Soon after my arrival I mentioned that there had been a sale of fancy articles at the French Legation last evening for the benefit of the schools and hospital established by the Sisters of Charity. Hsü ta jên seemed astonished to hear that so much interest was taken in the work of the sisters by foreigners in Peking, and expressed some doubt as to the sincerity of the professions of the former in every respect. I endeavoured to explain to him how much good they did among the sick and poor, and in how great esteem they were held by foreigners of every sect and creed. He then remarked that that would explain the indignation of foreigners at the Tien-tsin massacre, which, in his opinion, was a much more serious affair than the Yünnan outrage. In the one case a massacre occurred in a city, close to the capital, where foreigners of several nationalities were murdered, the only accusation against them being one which there was no evidence to support; while the Yünnan outrage was perpetrated in a distant border province, and in the open country, only one man being killed. "It is all very well to say," he continued, "that the Tien-tsin massacre was the act of the populace, whose sudden outbreak it was impossible to control, but the Chinese Government could hardly acknowledge that it was unable to keep its own people in check in such a place as that." The Chinese, he considered, got off very easily on that occasion, owing, as they very well knew, only to the fact that France had at the time other matters to attend to.

I did not attempt to discuss with him the relative gravity of the two outrages between which he was drawing a parallel, but pointed out that the Yünnan affair was still under investigation, and that he could hardly speak with sufficient positiveness about it; there were several matters that had yet to be cleared up; to what extent, for instance, there had been complicity. "Ah!" said Hsü ta jên, "and I don't know whether that matter ever will be cleared up. There is one man who no doubt could tell, but he won't, and that is Ts'ên Fu-t'ai." He then went on to compare the Yünnan affair to many cases relating to purely Chinese matters that have not been, and never will be, cleared up. He mentioned in particular some recent case, I think one upon which a long Memorial has lately appeared in the "Gazette." They never would be cleared up, because the officials would not speak out, and this Sir T. Wade must know very well; he had not been all these years in China without making that discovery. The Tichborne case was a proof that even in England judicial inquiry was not always successful. He declared that Li-chung-t'ang did not know

the particulars of the case when taken to task by Sir T. Wade at Tien-tsin, nor were they fully known to his Excellency or the Yamên now. His brother the Commissioner, whose business and interest it was to investigate the matter thoroughly, was not certain to find out all the particulars, the place was too far off. This last remark I am not quite positive about, as he dropped his voice to a whisper, which was almost drowned by the noise of a child crying in the next room.

His Excellency then asked whether Sir T. Wade had returned the visits of the Heads of Department. I said he had returned some yesterday, and had been out with the same intention to-day.

Hsü ta jên had heard that the Japanese Minister was giving a breakfast party, and asked if all the foreign Ministers were to be present. I replied that I believed Sir T. Wade had gone, but did not know whether all the foreign Representatives were to be there. He then asked if there were to be ladies present, to which, as before, I answered that I did not know.

His Excellency thereupon began to speak of the Japanese Government in not particularly friendly terms. Japan, he said, would, he was sure, attack Corea, and China would certainly let them both alone. Advice had been given to Corea, but he did not see why Japan should trouble China about the matter, which was not one that came within the range of Treaty provision. The Americans did not do things in that way. He mentioned Mr. Mori's visit to Li-chung-t'ang, which he said was ill-advised. Mr. Mori had not spent more than a day or two in negotiations with the Tsung-li Yamên, when he went off to Pao-ting Fu to see Li-chung-t'ang, who gave him some good advice, but that was all.

As usual, he asked me a great many questions about England and English ways, and from that the conversation drifted on to the subject of his intended mission. He said he was very anxious to get away, and was tired of being kept in this suspense. He had resigned his appointments in Tien-tsin, and had come to Peking to be in readiness to start, and here he was, with no pay and very little to do, waiting on and on. He had thought of applying for leave and going to his home, but then again he wanted to be on the spot to see what turn affairs took. He was anxious to go to England, because he wanted to see foreign countries, but still more that he might get his mission over, and obtain sufficient "lao chi," or meritorious service, to start him on the road to official advancement in his career in China. Now he was neither one thing nor the other; he was not a "T'ang kuan" nor a "Ssu kuan" (senior in an office nor clerk of Department), but only an expectant Taotai, with no prospect of being anything else until he had accomplished his mission. His Excellency Kuo, he said, was better off; he had got his "lao chi" before he had worked for it, though he, by accepting the post of Envoy, had missed being appointed Governor of Fu Kein, an opportunity, now that it had once passed by him, he would never have again.

He deplored the delay which had taken place in the despatch of the mission of inquiry, saying, that by putting it off so long matters in Yünnan had been allowed to be, as I understood him, "cooked up," or "involved in confusion." The expression that he made use of was new to me, and I regret to say that I have not retained it. Mr. Grosvenor's Report, however, must soon arrive, and then Sir T. Wade would surely have something to say, and they would learn what he really wanted. At present, when pressed on the subject, all the answer he would give was to refer to his despatches of such and such a date. He (the Envoy Hsü), however, was of opinion that it would not be wise to go to England while matters were in their present condition. The Mission was certain to start sooner or later, and no doubt Sir T. Wade would give them a timely hint when they could go forward. The sooner the better; their work would then be easy; and although it would cost them privately a good deal of money, their office would be a sinecure.

He asked some question as to the state of affairs in Turkey, and I informed him that the latest telegrams were satisfactory.

(Signed) WALTER C. HILLIER.

February 11, 1876.



No. 38.

*The Earl of Derby to Sir T. Wade.*

Sir, *Foreign Office, May 4, 1876.*  
 I HAVE received your despatch of the 23rd of February, together with its inclosures, and I have to convey to you my approval of the instructions addressed by you to Mr. Grosvenor, for his guidance during the Yünnan inquiry, as well as of your proceedings as reported by you in your despatch.

I am, &c.  
 (Signed) DERBY.

No. 39.

*Sir T. Wade to the Earl of Derby.—(Received May 6.)*

My Lord, *Peking, March 14, 1876.*  
 IN my despatch of the 23rd of February I had the honour to inclose translation of a note received from the High Commissioner in Yünnan, and copy of my reply to it; copies also of a further letter of instruction to Mr. Grosvenor, and of two notes to the Prince of Kung, giving cover respectively to my reply to the Commissioners, and to my letter to Mr. Grosvenor. These two notes were acknowledged together on the 26th, in a reply, of which I append translation.

On the 29th I addressed three further notes to His Imperial Highness, copies of which I inclose. In the first I stated that an escort had been sent by the Government of India to wait for news of Mr. Grosvenor in Burmah, and I requested that orders might be given to the Yünnan authorities to supply such information regarding the point on the Yünnan frontier to which this escort might be moved on to meet Mr. Grosvenor, as would prevent the possibility of any mistake. In the second, I communicated the substance of telegrams received from the Viceroy of India, regarding the reported attempt of the local authorities to excite the people against the mission and its objects. In the third, I apprised the Prince of the receipt of the record of your Lordship's message telegraphed on the arrival of Mr. Edwardes. As stated in my despatch of the 25th of January, I had already informed His Imperial Highness of the substance of that message.

The Prince replied, on the 3rd instant, to the first of the above notes, that relating to the escort, singly, and to the other two, collectively. I append translations of both replies.

There is nothing in either specially calling for attention.

I have, &c.  
 (Signed) THOMAS FRANCIS WADE.

Inclosure 1 in No. 39.

*The Prince of Kung to Sir T. Wade.*

(Translation.) *Peking, February 26, 1876.*  
 THE Prince has to acknowledge the receipt of the British Minister's note, on the 24th instant, requesting that a letter addressed by him to Mr. Grosvenor might be forwarded to its destination; and, on the same day, of another note, inclosing copy of a communication addressed by the British Minister to the Imperial Commissioners, Li and Sieh, on the subject of an escort, which it is intended shall meet Mr. Grosvenor upon his crossing the Yünnan frontier into Burmah.

Immediately on their receipt at the Yamên, the letters for Mr. Grosvenor and the Imperial Commissioners, Li and Sieh, were sealed up in a separate cover, and sent off express to Yünnan, with orders that they be delivered at their respective addresses.

The copy of the communication addressed by the British Minister to the Imperial Commissioners, Li and Sieh, inclosed in the note now under acknowledgment, has been duly perused by the Prince, who now begs to make this communication in reply.

## Inclosure 2 in No. 39.

*Sir T. Wade to the Prince of Kung.*

Sir,

*Peking, February 29, 1876.*

I HAVE the honour to acknowledge the receipt of your Imperial Highness' reply of the 26th instant, and beg to express my thanks for the promise that my letters to the High Commissioners and to Mr. Grosvenor shall be severally forwarded to their destinations.

On the evening of the 25th, I received a letter from the Viceroy of India, dated 8th January, inclosing me copy of the instructions that had been sent by his Excellency to the Resident at Mandalay, regarding the escort of Mr. Grosvenor. The Burmese Government will be moved as before to provide a contingent for the escort of Mr. Grosvenor and his party from whatever point they may be conducted to by the Chinese escort, which the High Commissioner Li has promised should be sent. The Government of India is, on its part, holding in readiness a force of 200 British and 100 native infantry to be employed on the same service. These are to be halted at a place named in British territory, but close to the Burmese frontier, until instructions be sent to them to move forward. This arrangement has been decided on because the Government of India is not as yet certain as to the point of the frontier of Yünnan to which Mr. Grosvenor and his party are to be escorted.

I shall be much obliged to your Imperial Highness to send instructions at once to the High Commissioner Li to let Mr. Grosvenor know to what point on the Yünnan frontier it is proposed so to escort him. Mr. Grosvenor will then be enabled to send a message to Bhamo to convey the necessary information to the Agent of the Government of India there stationed.

As I have already stated, according to Colonel Browne, the boundary line between the Empire of China and the Kingdom of Burma is marked by a river named the Nanp'eag Kiang, part of the course of which is but some fifteen or twenty miles from Manwyne. Mr. Grosvenor is instructed by me, as your Imperial Highness is aware, to proceed to Manwyne, and I should imagine that there can be little difficulty in settling the spot at which the two escorts are to meet each other.

I beg to inclose, for transmission to Mr. Grosvenor, a letter in which I have communicated to him the substance of this note.

I have some other matter relating to his mission, which I shall make the subject of a separate note.

I renew, &amp;c.

(Signed) THOMAS FRANCIS WADE.

## Inclosure 3 in No. 39.

*Sir T. Wade to the Prince of Kung.*

Sir,

*Peking, February 29, 1876.*

THE matter to which I had the honour to refer at the close of my earlier note of this date is as follows :—

On the evening of the 25th I received from the Viceroy of India two telegrams, the first dated 5th instant, the second 9th instant. Both were to the effect that certain Chinese authorities in Yünnan were exciting the people to oppose the inquiry which the High Commissioner Li had been sent to institute into the circumstances of the Yünnan outrage. The particular locality was not indicated in the telegrams, but I think it right that your Imperial Highness should be informed of the prevalence of reports to this effect.

I renew, &amp;c.

(Signed) THOMAS FRANCIS WADE.



## Inclosure 4 in No. 39.

*Sir T. Wade to the Prince of Kung.*Sir, *Peking, February 29, 1876.*

IN continuation of my earlier notes of this date, I have the honour to state that in despatches received from the Earl of Derby on the 25th instant, his Lordship informs me of the receipt of my despatches forwarded by Mr. Edwardes, of whose arrival your Imperial Highness is aware I had already been apprised by telegraph.

My despatches gave cover to my instructions to Mr. Grosvenor, and to copies of my correspondence with the Governor-General Li, and with your Imperial Highness from the date of my return to Peking in September until my departure thence on the 11th October.

All I have written is approved by the Earl of Derby. His Lordship also expresses approval of my attachment of Mr. Davenport to Mr. Grosvenor's mission.

I renew, &c.

(Signed) THOMAS FRANCIS WADE.

## Inclosure 5 in No. 39.

*The Prince of Kung to Sir T. Wade.*

(Translation.)

*March 3, 1876.*

THE Prince has to acknowledge the receipt, on the 29th instant, of the British Minister's note, requesting that the Imperial Commissioner Li might be instructed to inform Mr. Grosvenor to what point of the Yunnan frontier it was proposed to escort him, in order that he might notify the British Resident at Bhamo, who would convey the information to the escort, which will be in readiness to receive Mr. Grosvenor on the Burmese frontier, at whatever point Mr. Grosvenor may be conducted to by the Chinese escort.

The British Minister further requests that the Yamên will transmit to Mr. Grosvenor a letter in which he has communicated to him the substance of the note now under acknowledgment.

With respect to the absence of information as to the point on the Chinese frontier to which Mr. Grosvenor and his party will be escorted, the Prince begs to state, in reply, that the Yamên has already forwarded by express to the Imperial Commissioner Li a copy of the British Minister's note, requesting him to ascertain precisely, and notify to Mr. Grosvenor, the spot on the frontier between China and Burmah [to which the party will be escorted], in order that Mr. Grosvenor may send a message in advance to the British Resident at Bhamo.

The letter for transmission to Mr. Grosvenor was forwarded by the same opportunity.

## Inclosure 6 in No. 39.

*The Prince of Kung to Sir T. Wade.*

(Translation.)

*Peking, March 3, 1876.*

THE Prince has to acknowledge the receipt of the British Minister's note of the 29th February, informing him of the receipt of two telegrams from the Viceroy of India, with reference to reports stating that certain officials of Yunnan were inciting the people to obstruct the inquiry, for the conduct of which the Imperial Commissioner Li was appointed; and in reply the Prince has to observe that the object which the Chinese Government proposes to itself, in all judicial proceedings, is by elucidation of the actual truth and infliction of such punishment as is appropriate to the offence committed, to pursue the course which is calculated to obtain the concurrence of the public mind. On receipt of the statements now communicated in the despatch under acknowledgment, the Yamên of Foreign Affairs writes to the Imperial Commissioner Li, desiring him to act in concert with the Governor-General and Governor of Yunnan in taking careful measures for the maintenance of authoritative control, and for the prevention of all disorder.

The Prince has likewise to acknowledge the receipt of the British Minister's despatch of the same date with the foregoing, acquainting him with the approval signified by the Earl of Derby of his correspondence, which was forwarded to England by the hands of Mr. Edwardes.

*Sir T. Wade to the Earl of Derby.—(Received May 6.)*

My Lord,

*Peking, March 14, 1876.*

REMARKS having been more than once made upon Mr. Grosvenor's selection of the lengthier route to Yünnan, in a fashion that induced me to expect to find capital made of the allegation in the discussion inevitably ahead of us, I thought it well to show beforehand that the choice of routes had really lain with the Grand Secretary Li Hung-chang and the officer Sung Pao-hua, appointed by his Excellency to accompany Mr. Grosvenor's mission. I accordingly wrote to the Prince of Kung the inclosed note, touching the despatch of which, at this juncture, however, I shall give some further explanation elsewhere. I followed it up by forwarding His Imperial Highness' translations of your Lordship's despatch of the 1st January, written after careful consideration of the correspondence laid before your Lordship by Mr. Edwardes. Copy of this latter note is also inclosed.

The Prince will not, I imagine, reply to either, especially the last. As my previous despatch of this day reports, His Imperial Highness has already taken notice of my intimation of Mr. Edwardes' arrival in England, and the receipt of the despatches entrusted to his care.

I have, &c.

(Signed)

THOMAS FRANCIS WADE.

Inclosure 1 in No. 40.

*Sir T. Wade to the Prince of Kung.*

Sir,

*Peking, March 5, 1876.*

AS allusions have been made more than once by different members of the Yamên to route taken by Mr. Grosvenor, and in a tone implying that by his preference of the way by Sze-chu'an to the way by Hu Nan, he had unnecessarily delayed the termination of the Yünnan affair, I think it well to lay before Your Imperial Highness copies of a correspondence between Mr. Mongan, Her Majesty's Consul at Tien-tsin, and the Grand Secretary Li upon the subject of the route to be taken, with translation of the Consul's report of what fell from the Grand Secretary in conversation with himself and Mr. Mayers, when by my desire, they waited on his Excellency, last April, to learn whether, if Mr. Grosvenor were sent round to Rangoon, it might not be possible to send the Sub-Prefect with him.

It will thence be seen that it was the Grand Secretary who indicated the Sze-chu'an route as the route to be followed. I beg particular attention to his remark that the journey by Hu Peh and Sze-chu'an would not occupy more than three months; that it would thus be slow but sure. I was prepared, notwithstanding this, to instruct Mr. Grosvenor last October to follow the footsteps of the High Commissioner Li Han-chang through Hu Nan, but on mentioning my intention to Mr. Grosvenor he informed me that the Sub-Prefect Sung had made his arrangements with reference to the Sze-chu'an route, and that an official of the Sze-chu'an Government was to meet the party at Ku'ei-chou Fu. This proved correct. An official was waiting at Ku'ei-chou Fu.

I shall not for the moment trouble your Imperial Highness at greater length upon the matter. I wish it merely to be understood beforehand that I shall object to any insinuation that a satisfactory settlement of the Yünnan affair has been deferred by the slowness of Mr. Grosvenor's movements. The difficulties that have presented themselves in the way of its adjustment demand a widely different explanation.

I renew, &c.

(Signed)

THOMAS FRANCIS WADE.

Inclosure 2 in No. 40.

*Sir T. Wade to the Prince of Kung.*

Sir,

*Peking, March 6, 1876.*

I HAD the honour to inform your Imperial Highness in a note dated the 24th of January last, that the Earl of Derby had apprised me by telegram of the arrival of Mr. Edwardes in London with despatches from me, and of the general approval of my proceedings reported therein.



By the mail which reached this on the 2nd instant, I received a despatch from his Lordship upon the subject of this correspondence, which I consider it my duty to communicate *in extenso* to your Imperial Highness. I beg accordingly to inclose a copy and translation of this despatch.

I renew, &c.  
(Signed) THOMAS FRANCIS WADE.

No. 41.

*Sir T. Wade to the Earl of Derby.—(Received May 6.)*

My Lord,

Peking, March 14, 1876.

IN a telegram dated 2nd instant I had the honour to inform your Lordship of Mr. Grosvenor's arrival on the 3rd February, at a place near the frontier of Yünnan. This intelligence was supplied by the Tsung-li-Yamên. I had sent Mr. Mayers, on the 1st instant, to the Yamên to inquire about a large loan which I had heard was about to be negotiated for the Chinese Government. I shall refer to this again. Mr. Mayers was at the same time to ask if news had been received of Mr. Grosvenor. In reply, the President Tung produced from his book a sort of itinerary of which I inclose translation.

The Grand Secretary Shên remarked that travelling was so slow by the route selected, that Mr. Grosvenor had been longer reaching Yünnan than could have been expected. This was one, the most recent, of the observations to which I have referred in my previous despatch of this date,\* as having, in my opinion, rendered it necessary.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

Inclosure in No. 41.

*Memorandum showing the Progress of Mr. Grosvenor's Mission, communicated by the Yamên of Foreign Affairs, March 1, 1876.*

THE Taotai of the Chu'an Tung Circuit, by name Yao, reports that, on the 9th December, 1875, Mr. Grosvenor and party passed with the limits of the Province of Sze-chu'an.

On the 30th December they arrived at Ch'ung K'ing, and on the 31st December they called at the Roman Catholic Mission House to see Père Vinçot, the Vicaire Apostolique.

On the 14th January, 1876, they arrived at Lu Chou.

On the 16th of January they resumed their journey in the same boat; and on the 22nd January they reached Hsü-Chou Fu.

Yen, Taotai of the Yung Ning Circuit, reports as follows :—

On the 25th January party arrived at P'ing-Shan Hien.

On the 27th January Messrs. Grosvenor and Baber walked to some rapids some tens of li off, and then returned.

On the evening of the 30th January the party determined to continue the journey by land.

On the 3rd February they returned by water to An-Yao in the Yi-p'in district (Prefecture of Sü-chon), where they took the road to Lao Yao-t'an. From this place there is a direct road to the frontier of Chao-t'ung Fu (the northernmost Prefecture in Yünnan). They should reach Yünnan Fu about the end of February, or the beginning of March.

No. 42.

*Consul Medhurst to the Earl of Derby.—(Received May 7.)*

(Telegraphic.)

Shanghai, April 29, 1876.

PRIVATE note received from Grosvenor to-day dated 23rd March. To leave Yünnan Fu in two or four days, and expects to reach Manwyne on 5th May. Asks me

to telegraph Chief Commissioner, Rangoon, his arrangement, to be handed over by Chinese to British escort at Manwyne. Every one in best of health. People's demeanour perfect.

No. 43.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, May 11, 1876.*

I HAVE received your despatch of the 14th of March on the subject of Mr. Grosvenor's mission to Yünnan, and I have to convey to you my approval of the notes you addressed to the Prince of Kung, copies of which you inclose in your above-mentioned despatch.

I am, &c.  
(Signed) DERBY.

No. 44.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, May 11, 1876.*

I APPROVE the notes, copies of which are inclosed in your despatch of the 14th of March, which you addressed to the Prince of Kung, in regard to the selection of the route adopted by Mr. Grosvenor's mission to Yünnan.

I am, &c.  
(Signed) DERBY.

No. 45.

*Sir T. Wade to the Earl of Derby.—(Received May 22.)*

My Lord,

*Peking, March 29, 1876.*

I HAVE already mentioned that I believe the Tsung-li Yamên to be keeping back news of Mr. Grosvenor's movements. The manner of the Ministers when I ask questions on the subject inspires me with suspicion; but independently of this, it must be remembered that, according to the itinerary supplied by the Ministers, and inclosed in my despatch of the 14th instant,\* Mr. Grosvenor had reached the neighbourhood of Sü-chou Fu, in latitude 28° 38' north, longitude 104° 45' east, on the 3rd of February. From An-yao, the place near Sü-chou at which he then was, he was to proceed viâ Chao-tung Fu, the whole distance, from An-yao to Yünnan Fu, the capital of Yünnan, not being above 450 miles. Travelling at the rate even of twenty miles a day, he should have been at Yünnan Fu by the 25th February. The first despatch of the High Commissioners, publication of which so much dissatisfied me, came up in twelve or fourteen days, and I cannot believe that nothing relating to the Mission has been received from them since.

I have, &c.  
(Signed) THOMAS FRANCIS WADE.

No. 46.

*The Earl of Derby to Sir T. Wade.*

Sir,

*Foreign Office, May 25, 1876.*

I HAVE had under my consideration, in communication with Her Majesty's Secretary of State for India, your despatch of the 16th of December last; and I have to convey to you my approval of the supplementary instructions, of which you inclose a copy therein, addressed by you to Mr. Grosvenor, directing him to return from Yünnan by way of Burmah.

I am, &c.  
(Signed) DERBY.



*Sir T. Wade to the Earl of Derby.—(Received May 29.)*

(Telegraphic.)

*Peking, May 18, 1876.*

THE long Report to the Throne of the High Commissioners was, with other documents, placed in the hand of the Chinese Secretary on the 8th instant at the Yamên. It is asked by the High Commissioners that the Yamên and the Board of Punishments may be requested to take the Report into their joint consideration. A Decree has accordingly been issued, but nothing has been published.

I have addressed a request in writing to the Prince of Kung asking that these papers may be communicated to me officially.

All the blame of the murder is sought to be laid on the savages by the Chinese Government, and they try to prove that the attack on Colonel Browne was solely instigated by Li, the gentry of the district having been alarmed by Colonel Browne's arrival. All the higher officials and gentry would thus be exonerated.

I cannot accept this story with the other evidence in my hands. The paper contains contradictions and falsehoods, and, in view of the former history of such acts, and the equivocal conduct throughout the present affair of the Chinese Government, I have made a protest against the punishment of Li or the execution of the savages. I add that I do not demand any longer the punishment of the provincial authorities. I fix the whole responsibility on the Central Government, and demand such reparation as will in the future better secure foreign relations.

The papers are voluminous. Only yesterday the last translation was finished. Towards the end of the month I shall be at Shanghae to meet the Secretary, and until I have seen him I shall not close my Report to your Lordship.

Judicial satisfaction is unattainable, and I shall have difficulty about the form of reparation. I may have to refer again to your Lordship on this account. I see no reason, however, to despair, if the Chinese believe us to be in earnest.

*Sir T. Wade to the Earl of Derby.—(Received June 5.)*

My Lord,

*Peking, April 7, 1876.*

MY telegram of the 3rd instant will have informed your Lordship that I had received a letter from Mr. Grosvenor. I have the honour to inclose copy of it. Mr. Grosvenor, it will be seen, reached Yünnan-fu, the capital of the Province, on the 6th March, and wrote to me the day following. He was in receipt of my letter, forwarded by different channels, in triplicate, copy of which formed Inclosure No. 1 in my despatch to your Lordship of the 16th December, 1875. Hence, I assume, the guarded tone of his to me. He was in doubt, I imagine, about the security of correspondence entrusted to Chinese Government couriers. I shall look for some communication from him by a private hand. This, however, can hardly arrive for some weeks.

Mr. Grosvenor's letter, it is to be observed, took twenty-seven days to reach me. The letter to me from the High Commissioners, translation of which was forwarded your Lordship in my despatch of the 16th February, was received at the Legation upon the 15th February, that is, seventeen days from the date of its expedition.

I have earlier referred to my belief that the T'sung-li Yamên was in possession of information that it was keeping back from me, and this suspicion is confirmed by other evidence than that supplied by the inexplicable difference in the rate of speed at which the above letter of the Commissioners and Mr. Grosvenor's letter have been transmitted. A rumour was current a few days since that the Grand Secretary Li, Governor-General of this Province, was on his way to the capital. As his Excellency Li had declared himself very anxious to see Sir Douglas Forsyth, who was staying with me, and as, if this rumour were true, there was every chance that Sir Douglas Forsyth and he might miss each other, I instructed Mr. Mayers to call on the Envoy designate, Hsü Chien-shên, who is a relative of the Grand Secretary, to make inquiries. The Envoy, Hsü, had heard nothing about the contemplated visit, but adverting to the receipt of news from Mr. Grosvenor, he remarked that he had been satisfactorily received by the High Commissioner Li; Mr. Grosvenor, as his letter shows, had not yet seen the High Commissioner.

I infer that the Yamên is in possession of letters of later date, which doubtless speak

of Mr. Grosvenor's reception of the evidence that would be tendered him regarding the outrage. Why, it may be asked, should it be withholding intelligence that must be presently communicated? Most likely because it is trusting in luck; hoping that something may turn up in the chapter of accidents that will diminish the difficulties now before it. I have not replied to the short note of the Minister's which gave cover to Mr. Grosvenor's letter, but I have requested a conference to-morrow, the result of which I shall, of course, report to your Lordship.

I have, independently of the Yünnan affair, another very thorny question on my hands. I shall explain the complication elsewhere.

I have, &c.

(Signed)

THOMAS FRANCIS WADE.

Inclosure in No. 48.

*Mr. Grosvenor to Sir T. Wade.*

Sir,

*Yünnan-fu, March 7, 1876.*

I HAVE the honour to report that, in company with Messrs. Davenport and Baber, I reached the provincial capital in health and safety yesterday afternoon.

The official residence assigned to the use of this mission is comfortable and fairly clean. The Magistrate of the Mixed Court at Shanghai, Chên, was deputed by their Excellencies Li, Süeh, and Ts'ên to receive me. I returned their Excellencies my best thanks for the care taken to provide for my comfort since I had reached the Province of Yünnan.

I have the honour to acknowledge the receipt of three copies of a despatch, dated December 14, 1875; each copy containing as an inclosure your instructions to me of the 30th October last. Yesterday evening his Excellency Li-Han-Ch'ang sent me the English version of a despatch you had addressed to him.

I shall request his Excellency Li-Han-Ch'ang to forward this despatch to you as quickly as he can.

I have, &c.

(Signed)

T. G. GROSVENOR.

No. 49.

*The Earl of Derby to Sir T. Wade.*

(Telegraphic.)

*Foreign Office, June 14, 1876, 5:25 P.M.*

YOU should avoid pledging in any way Her Majesty's Government until Mr. Grosvenor's Report has been received and considered by them, when instructions will be given to you for your guidance.

No. 50.

*Lord Tenterden to the Secretary to the Admiralty.*

Sir,

*Foreign Office, June 29, 1876.*

WITH reference to my letter of the 12th instant, I am directed by the Earl of Derby to state to you, for the information of the Lords Commissioners of the Admiralty, that a telegram, dated the 24th instant, has been received from Sir T. Wade stating that he finds it impossible at present to dispense with the four ships of the detached squadron now in China.

I am, &c.

(Signed)

TENTERDEN.





FURTHER CORRESPONDENCE respecting the Attack  
on the Indian Expedition to Western China, and  
the Murder of Mr. Margary.

(In continuation of C. 1422, presented April 1876.)

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*Presented to both Houses of Parliament by  
Command of Her Majesty. 1876.*

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CHINA. No. 2 (1876).

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REPORT

BY

SIR B. ROBERTSON

RESPECTING HIS

VISIT TO HAIPHONG AND HANOI,

IN

TONQUIN.

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## Report by Sir B. Robertson respecting his Visit to Haiphong and Hanoi, in Tonquin.

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*Sir B. Robertson to the Earl of Derby.—(Received July 11.)*

My Lord,

Canton, May 19, 1876.

I HAVE the honour to forward a copy of a despatch and its inclosures which I addressed to Her Majesty's Minister at Peking, reporting my return from Haiphong and Hanoi in Tonquin.

I have, &c.

(Signed) B. ROBERTSON, Consul.

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Inclosure 1.

*Sir B. Robertson to Sir T. Wade.*

(Extract.)

Canton, May 9, 1876.

I HAVE the honour to inform you that I proceeded, in accordance with your instructions on the 2nd instant, in Her Majesty's ship "Egeria" to visit the ports of Haiphong and Hanoi, lately opened by the French in Tonquin, and having first made the anchorage of Apuwan, a cluster of islands near the mouth of the Cua-cam, a branch of the Songkoi or Red River, Haiphong being situated on the former and Hanoi on the latter. There a pilot was obtained, who took the ship over the bar of the river and anchored her off the Settlement of Haiphong on the forenoon of the 7th instant.

Haiphong is situated on the right bank of the Cua-cam and a canal which leads out of it at right angles, at the junction of which there is a French fort strongly constructed of earthworks. The country is a perfect level on both sides, with ranges of hills about four miles distant, and the French Settlement is being made by raising the ground with the mud, or clay rather, dug from a canal which will surround the concession, as it is called, much after the manner in which the British Settlement of Shamien in Canton is enfiladed. It is evidently a work of great labour, which is being actively prosecuted under French engineers, with the assistance of Annamite coolies, of which there is an unlimited supply, at the rate of 6 cents (3*d.*) per man per day. I should say that at least forty acres are under construction, and already buildings are being erected upon the finished portions, and considering this work was begun in September last only, it is very far advanced. As yet no ill effects have been felt from turning up this vast mud field, but possibly that has to come when the great heat which prevails from May to the end of September sets in. The village is a simple street along the right bank of the canal, beginning at the square in front of the entrance of the fort, and is composed of mat huts of a very inferior description, inhabited by the natives, with here and there a better class occupied by French shops, principally sellers of wine and spirits. There is, however, a very good market, with abundance of fish, fowls, and beef, but no mutton, and vegetables, and once in the week there is held what is called "the great market," when the country people flock in with their goods and produce. Previous to the French taking possession, there was scarcely a hut, even in Haiphong, and now there is a considerable village, with the usual Annamite cottages being erected in all directions. On wet days, however, the street is all but impassable from the depth of mud, but near the fort shingle has

been strewn on the road, which is a little improvement upon the usual state of things.

Haiphong is the highest point to which vessels drawing fourteen feet can ascend the Cua-cam, and for the present is the shipping port of Hanoi, the capital of the Province, which is situated upon the Songkoi or Red River, about 60 miles distant in a direct line, and 145 by the water route. From the extensive works under construction, it appears as if the French intended it to be the anchorage for foreign vessels; but the Red River, which debouches into the sea about twelve miles to the southward of the Cua-cam, is a fine stream, with a rise and fall in the freshets of from twenty-six to thirty feet, although at this season of the year it is very low; in fact it reminded me of the Yangtze Kiang, bars and sandbanks blockading its approaches from the sea. When well surveyed, I can imagine no greater existing difficulty in its navigation to Hanoi than the Yangtze offers to Hankow, and we know how well that has been overcome. I do not therefore see the utility of the works now being prosecuted at a great expense at Haiphong, but there may be reasons for it unknown to me.

Haiphong is connected with Hanoi either by the River Cua-cam or by canals, the most available of which I have mentioned as having its entrance at that place. After proceeding about twenty-three miles by this route, boats turn into another canal, and, after going some seventy-seven miles, enter the main river, the Songkoi or Red River, and so on to Hanoi, distant about forty-five miles. The water in these canals at this season is very low, and rises but little with the tides of the two rivers which feed them. During the summer freshets they are deep enough for steam launches or small steamers drawing four or five feet, or perhaps more.

At Haiphong there was little to be seen and not much to be learned, for what business there is is done at the capital, Hanoi, where the natives and the Chinese merchants reside. At one time I almost despaired of being able to reach the latter, for of native passage boats there are none, decked or covered over at least, and the distance was too great to attempt it in the "Egeria's" small steam-cutter. I found, however, a trading steam-launch called the "City of Whampoa," which I succeeded in chartering, for I felt, unless I reached the capital, the object of my visit to Tonquin would fail. I was therefore glad to hire her, indifferent as her accommodation was.

Captain Castle, the commander of Her Majesty's ship "Egeria," and myself were most kindly and hospitably received by M. Ture, the French Consul at Haiphong, the Commandant of the fort, Major Dubeaux, and M. Gres, the Director of Customs. The former gave me all the information I required respecting the trade of the country, and its resources; but frankly said it was still in an incipient state, and in the hands of Chinese at Hanoi; and whether it would develop into importance depended chiefly on the communications with Chinese Yunnan being re-opened. He furnished me with a list of the principal articles of merchandize imported and exported via Haiphong, and a return of the exports therefrom from the 15th of September, 1875, to the 12th of April, 1876, showing a value of 198,914 t. 4 m. 6 c.; of imports there being none. Copies of these documents you will find annexed to this Report.

The Customs at Haiphong are under the control of a French officer, M. Jules Gres, with the title of Inspector; but there are three or more Annamese, calling themselves Inspectors and sub-Inspectors of Customs. I called on these officers at the Custom-house, and was most politely received; but they gave, or could give but little information regarding the trade of the country, but expressed their desire to see English merchant-vessels come to the port.

On the 10th instant, accompanied by Captain Castle, I left in the steam-launch for Hanoi.

There was but little to be seen of the country, the banks of the canal being too high; but from what I saw, it appeared to be fertile, and planted with maize and sugar-cane, sweet potatoes, and other products of these latitudes. On debouching, however, into the main stream, the Songkoi, or Red River, a better view was obtained; and here the bamboo and other trees, with villages and fields, made together a scene of much natural beauty, and gave evidences of a high state of cultivation. I had been informed that little or no boat or junk traffic would be seen, but I found a fair amount of it; and from the stake-nets and boats employed, there is evidently a large supply of fish; rafts of wood and bamboo were frequently met; and altogether there were fair evidences of a contented and well-to-do population.

At this season, taking from December to May, the Red River (Songkoi) is at its lowest, enormous stretches of sand-bands lining the stream, and points of them jutting almost into the centre. About May the melted snow and ice from the mountains



of Upper Tonquin and Yünnan come down and the river rises rapidly, attaining a height of thirty feet, and very frequently carrying away the banks, and flooding the country, to the great destruction of life and property. We passed some extensive works being prosecuted to repair an immense breach which last year's freshets had made, and all along the river and the canals preparations were being prosecuted by banking up and supporting the bunds. Annam evidently labours under the same mistake as China in the treatment of her rivers. Instead of dredging the channel, which year by year fills up with alluvial deposits, sand and clay brought down from the highlands, the authorities bank it up, and so in the course of time the bottom of a river is raised above the level of the adjoining land, and if it makes a breach in the bund during the freshets, the whole country is inundated and becomes a vast lake. Such is the cause of the inundations on the Yangtze, and notably that of the Yellow River in China, and evidently also of the Songkoi, or Red River, in Tonquin.

The approach to the city of Hanoi, the capital of Tonquin, is very fine, a turn of the river, which is here from bank to bank about a mile or more in breadth, brings into view the Town and the French Settlement which is under construction like that at Haiphong, with the barracks and Consular buildings under erection thereon. The city rises gradually from the river, and embedded in trees and foliage and seen on a bright and sunny day, has a charming appearance. We anchored off the landing-place at 10:30 A.M., on Monday the 10th, and went on shore at once to call upon the Comte de Kergaradec, the French Consul, who lives in the Annamite Examination Hall, at least a mile and a half from the river, but finding it impossible to get palanquins for hire, Captain Castle and myself called at the house of the Bishop, Monseigneur Pergenier to borrow them. Here, while talking to him, M. Aumoitte, Chancelier of the Consulate came, saying that M. Turc, the Consul at Haiphong, had sent a message overland to inform Comte de Kergaradec of our intended visit, and the messenger had arrived only an hour before us, and chairs were coming to take us to the Consulate. These duly arrived and we went on.

On reaching the Consulate I was received by M. de Kergaradec with great courtesy, and found he had prepared rooms for us.

The principal Annamese authorities at Hanoi are, the Tong-duc, or Viceroy, and the Chuan-Phu, or Futai. M. de Kergaradec asked me if I would like to see them, or at least one of them, as the Tong-duc was ill, and I said I would, so my cards were sent. And the Chuan-Phu shortly after called upon me, and I remembered having seen him at Canton when he came to have an interview with the late Viceroy Juilin. He reminded me of it, and mentioned several circumstances, and seemed glad to see me. He brought the Tong-duc's card, with his regrets, that he was too ill to leave his yamèn. Nothing, of course, but a complimentary visit passed, and in the afternoon, accompanied by M. de Kergaradec, Commandant Chapotot, and Captain Castle, with a guard of honour of French marines, I returned his visit in the Citadel. The Annamite yamèns, or palaces as they call them, are much the same as the Chinese. An Annamite guard of honour lined the courtyard, and the Chuan-Phu came to the door to receive us. After some conversation he expressed a hope I was pleased with my visit, and remarked I had come a long way to see Hanoi; and I replied that having been to Hainan to open it to British trade under the Treaty, I had crossed the Gulf of Tonquin to pay the Representative of the French Government at Hanoi a visit, England and France being on the most friendly terms, and that was my sole object. He then inquired whether there would be much trade at Kiung-chow, and if English vessels would come on from thence to the Tonquin ports? I answered they certainly would do so if the Annamese Government were favourable to foreign trade. He then said he wished to show me his troops and elephants, and we accordingly went to a parade-ground close by of large extent, where there were about 2,000 Annamese soldiers, under arms, and two elephants in front, which, when we were seated, advanced, knelt down nine times, and saluted. The troops then went through sundry manœuvres with great precision. They were well dressed, but badly armed with old flint-lock muskets, spears, and swords. After this I took my leave.

We then inspected the Hall of Ceremonies in which the Kings of Annam receive investiture from the Emperor of China. It was here that Lieutenant Garnier had his head-quarters after his capture of the citadel on the 20th of November, and in a plot of ground in the rear he and his four comrades were buried when killed on the 21st December, 1873.

That part of Hanoi where the citadel is built is somewhat higher than the other quarters of the city, the ground rising gently from the banks of the Songkoi to the height of about 180 feet above the level of the sea. A brick wall about 3 feet thick

and 12 feet high, comprising twelve bastions connected by curtains, surrounds the citadel which forms a perfect quadrilateral of some 3,600 feet on each side. This wall is supported by a "terreplain" which at places rises gradually from the interior of the citadel, whilst at others its inner side falls perpendicularly.

The height of the "terreplain" varies also a great deal, for at some places the besieged can be hidden entirely beyond the upper part of the wall, while in others they are half seen from the outside. Inside the citadel are the houses of the Governor and other high officials.

The citadel is girt at about a distance of 25 feet with a deep ditch, containing water, of an average width of 60 feet. Five gates give access to the citadel, one in the middle of each side, with the exception of the south side, which has two openings cut through the walls near the corner bastions; they may be called the south-eastern and south-western gate. The doorways are about 15 feet wide and are closed in with strong wooden gates. Above every gate stands a tower or guard-house.

In front of each gate is a redan, that is, two walls a little lower than the city ones, the faces meeting at an angle turned towards the country. These redans are also encircled with ditches which run into the moat of the fort, a gate connected by a bridge with the city or the fields adjoining is opened through the right face of each redan. Inside the redans small houses and barracks are inhabited by soldiers, and from the middle of the "gorge" of the redans strong three-arched bridges allow a passage across the moat to reach the gates in the main ramparts. It is the work of French Engineers employed by Gialong, the King of Annam, after his conquest of Tonquin in 1802.

In the interior of the citadel, besides the Government buildings and some barracks, there are but few houses, and in the centre is a very peculiar tower on a raised base some 20 feet high, and on the top of the tower the national flag is hoisted.

The town of Hanoi is situated between the citadel and the river, and extending beyond the former in a westerly direction. The streets are wide and the houses good, and well built of brick in some of the principal streets, but there are numerous ones where the shops are merely mat erections in the usual Tonkinese style; with one exception—the main street from the river where the Chinese live—the streets are unpaved, and in wet weather almost impassable from the depth of the mud; but as shoes are an exception with the Annamites, this drawback to European comfort does not affect them. The sedan-chair of China, so convenient for locomotion, is unknown, the high authorities and those who can afford it being carried in a hammock of silk or hemp network suspended on a pole supported on the shoulders of two or four bearers, and inclosed in silk or cotton curtains. There is a great deal of stir and movement in the streets; the shops are well stocked with articles of native workmanship, especially bamboo work in all its varieties, silk and cotton piece goods, paper, pewter, and glass ware, boxes, drums of all sizes richly painted, lacquered and gilt, and coarse crockery and china ware. Fowls, ducks, geese, oxen, and pigs, are both plentiful and cheap, with abundance of fruit, bananas and vegetables, and fish. Rice is the staple food of the people, who look well-fed and healthy, and have a fair amount of muscular development. The women, however, appear to be the dominant class, for they work like the men as coolies and labourers, and preside in the shops. They are generally good-looking, carry themselves gracefully, and but for the practice of blacking their teeth, many might be called handsome. The Tonquinese are evidently of the type of race which may be called "transitional," beginning in India, of which Burmah and Siam are offshoots; changing in the Malay peninsula and Annam, and again in the southern borders of China, and so with China proper, where it ends in the Mongol feature. The gradations are strongly marked and can be easily traced.

In manner the Tonquinese and Annamites are quiet and, owing probably to the the arbitrary Government they are under, subdued and indolent. The population of Hanoi, the capital, is estimated at from 150,000 to 200,000 Tonquinese, and about 3,000 Chinese.

Tonquin is divided into thirteen prefectures or tsan; Thauh-noi, Thauh-ngoai, Hung-hoa, Nam thuong, Nam ha, Haidong, Kinh bae, Sontai, Caobang, Lang bae or Lang-von, Thai-nguyen, Tuyen-quang, Quang-yen.

Both Tonquin and Annam have, from almost time immemorial, been the scene of rebellions, civil wars, and bloodshed. Passing over the rather obscure history of these events, it will be sufficient to date from the year 1740—1786.

At that date Canhung was King of Tonquin, or Ngan-nan as it was called, and Hien Vuong was King of Cochin China, or Annam, but was so disliked by his



subjects, that the influential family of Tayson revolted and killed him. He left a nephew, Nguyễn Auh, who fled to Saigon on the death of his uncle. The heads of the family of Tayson consisted of three brothers: the eldest, Yin-yae, was a wealthy merchant; the second, Long-niang, was a General Officer of high rank; and the third was a priest.

Cochin was then divided into three parts: the north had been conquered by the Tonquinese; Hué was occupied by the second brother, Long-niang; and lower Cochin was governed by Yin-yae; whilst the third brother was religious chief of the whole Empire.

Nguyễn-Auh, the nephew of Hien Vuong, who had fled to Saigon, determined to recover his kingdom from the three brothers of the Tayson family. At the time when Hien Vuong was killed there was a Catholic Bishop named Pigneaux de Betraïne, called Adran after his see, and he it was who saved the nephew Nguyễn-Auh, and took him to Saigon, and henceforth devoted himself to replacing him on the Tonquinese throne.

Long-niang, the second brother, then attacked the Tonquinese, and after expelling them from North Cochin, entered Tonquin in 1786, obliging Chin-long, the then King, to fly into China, where he ended his life at Peking, in exile.

Bishop Adran then took the eldest son of Nguyễn-Auh with him to Paris, to obtain assistance from Louis XVI of France, and a Treaty of Alliance was signed on the 28th November, 1787, and Bishop Adran returned.

In 1791 Long-niang died, leaving a son twelve years old; and Nguyễn-Auh, with the help of some French officers, brought from Europe by Bishop Adran, captured Yin-yae's fleet in 1793. In the same year Yin-yae died, and was succeeded by his son. Nguyễn-Auh attacked and defeated the latter in 1796, and conquered what territory remained under the government of the son of Long-niang, and thus Cochin (Annam) was once more in possession of its lawful sovereign.

The conquest of Cochin being finished in 1811, Nguyễn-Auh then turned his attention to Tonquin, the then King of which, Cauh-thiuh, the son of Quan-hung, he defeated in 1802, and being then sole sovereign of Annam, he assumed the title of Hwang-te, and the surname of Gia-long, by which he is best known, and since then Tonquin has been a province of the Annamite kingdom.

It may be observed that as far back as 1541 the Li family, the founder of the second dynasty, of which was Li-ki-mao or Li-hy, were the recognized heirs to the throne of Tonquin, and although they were displaced by usurpers, they are still considered so, and some of its representatives are said to exist.

Since the death of Gialong three monarchs have reigned in Cochin (Annam)—Ning Mang, 1820-1841; Tien-tri, 1841-1847; and Tuduc, the present King; but although they owe their kingdom to the exertions of Bishop Adran, they have unremittingly persecuted Christians. For instance, Father Fernandez was beheaded on the 24th July, Bishop Henaris on the 25th June, and Bishop Delgado died in prison on 12th July, 1838. Finally, in consequence of the execution of Bishop José Maria Diaz, on the 20th July, 1857, and for other outrages, war broke out between Annam, Spain, and France, and this was followed by the victories of Admirals Rigault de Genouilly at Turon, on the 1st September, 1858; and Saigon, on the 17th February, 1859; Chasner at Kihoa, on the 25th February, 1861; Page at Mytho, on the 12th April, 1861; and Bonard at Bein-hoa, on the 9th December, 1862; ending with the Treaty of Saigon, of the 5th of June, 1862, by which the Provinces of Gia-dinh (Saigon), Dinh-tuong (Mytho), and Bien-hoa and the Island of Perto Condor, in Lower Cochin, were ceded to France, and to these, on the grounds of intrigues and bad faith on the part of the Annamite Government, Vice-Admiral de la Grandière in June 1867 annexed the three western Provinces of Vinh-long, Choudoc, and Hatien.

The principal river in Tonquin, called the Ho-ti-kiang, but better known now as the Hung Kiang in Chinese, and the Song Koi, or Red River, in Annamese, has its rise in Thibet, and is navigable from Manghao, the last city in the Chinese Province of Yunnan, and so down to the sea, a distance of 414 miles. Manghao is the *entrepôt* where goods are shipped to and from Tonquin and Annam, the mart being a more northern city, called Mongtsze, situated also on the banks of Song Koi, or Red River, but called here the Ho-ti-kiang. Below Manghao, on the banks of the river, in Annamite territory, is situated the town of Laokay, two days' journey from the Tonquin capital, Hanoi. The Song Koi, or Red River, divides into various branches; the two southern ones meet above Hanoi. On one of them stands the town of Niu-hinh; on the other, that of Nam-dinh and Hung-yen. These two branches com-

municate by canals, on one of which is situated the town of Fouli. Another branch of the Song Koi is the Thai-binh River, which passes by Hai-duong. Between it and the Hanoi branch of the Song Koi, or Red River, runs the Longchi Canal; and a third and very important branch to the north of the above named is the River Cam, which passes Haiphong; the mouth of the Cam is called the Cua Cam. The three northernmost mouths by which the Song Koi falls into the sea are called Dai, Lak, and Balat. The distance from the mouth of the river to Manghao in Yünnan is as follows:—

|                                             | Miles. |
|---------------------------------------------|--------|
| From the mouth to Hanoi.. .. .              | 110    |
| „ Hanoi to Soutay .. .. .                   | 32     |
| „ Soutay to Annamite advanced posts .. .. . | 87     |
| „ Annamite camp to Laokay .. .. .           | 115    |
| „ Laokay to Manghao .. .. .                 | 70     |
| Miles from the sea to Manghao .. .. .       | 414    |

The borders of Tonquin and Yünnan have for a long time been in a very disturbed state, being in possession of two clans or bands of Chinese distinguished as the Black and Yellow Flags. The men comprising them were originally under the Chief Tienti, the head of the Kwangei rebellion, and, having escaped into Tonquin, captured the town of Laokay, on the Red River; but the two Chiefs having quarrelled, they separated, and one portion took possession of Ko-yang, a town lower down on the Red River, which places they still occupy, but are at war with each other, and each levies black mail upon all boats and goods passing into Yünnan, and thereby stopping the lucrative trade that had existed between Hanoi and that province.

As regards the route into Yünnan by Songkoi, or Red River, there can be no doubt of its availability, and that until lately a very considerable trade to and from Hanoi was done by the Chinese Resident there, and if the borders were cleared of the obstructions which exist in the shape of black mail and independent Chinese clans that trade would be renewed. I saw the peculiarly-constructed boats of great length, and drawing little water, employed in ascending the river as far as Manghao and Mangtsze, both large trading cities in Yünnan, and I closely questioned one or two people who had been that route and they stated no difficulties existed. That the River Songkoi is available, therefore, for the transit of the reported rich ores and produce of Yünnan and Tonquin seems certain, and on the removal of three obstacles alone a large and profitable trade may be said to depend, namely, the consent of the Governments of Tonquin and China to open the mines, and the clearance of the frontier of refugee Chinese and leviers of black mail. All these accomplished the rest is easy.

If the Songkoi or Red River opens a route with Yünnan and Kwang-si, that via the Shan States and Bhamo is not the less available, and the two offer equal advantages, nor is there any reason why their interests should clash; on the contrary, for these points of exit are distant, and one gives geographical facilities which the other does not.

Notices which have appeared in French publications urge upon the Government the necessity of taking immediate action by opening the Songkoi before the English have monopolized the trade of Western China by the Bhamo route; but this is a mistake, no single road from Yünnan could do that, and the more openings there are for the inlet and outlet of trade the better. Moreover such is not the intention or desire of the British Government as far as I am aware, and if the French policy in Tonquin were less restrictive it would draw foreign capital to the country, and develop its rich resources, which at present are in abeyance from the poverty of the Government and the people.

I found it difficult to obtain information regarding the commercial products of Tonquin, but I met with a native called Petrus Trueong Vinhky, who was an employé of the French Government at Saigon, and had been sent to inquire into the trading resources of that country.

He represented Tonquin to be rich in products of all kinds, having coal, copper, and tin mines, gold and silver. Its agricultural capabilities are immense, and silk is abundant and cheap; a piece of it might be purchased at Hanoi for 150 dollars which would cost at Saigon 250 dollars, and in China 400 dollars. This might be so, but from the little I saw of it I should say it was coarser in thread than that of China and very badly reeled, and the fabrics made from it were imperfect compared with the Chinese, and of very poor quality. Vinkhy confirmed the information I had received regarding the occupation of the river that passes into Yünnan



by the Black and Yellow Flags, and said as long as they held them the Yünnan trade would be paralysed. He believed, however, the French Consul at Hanoi would, in the course of a month or two, proceed there with an armed escort of 100 or 200 soldiers from Saigon to co-operate with the Annamites in clearing the road.

This was confirmed by M. de Kergaradec, who told me he was going there, partly to see into the state of affairs, and to come to some arrangements with the Flag factions, and partly for scientific purposes. I make no pretensions of giving an account of the native trade of Tonquin in this despatch, for my opportunity of obtaining information was too brief.

I can only say that from all accounts it is a very rich country, and with the establishment of good relations with the Government might be made a very profitable one to Western Nations; and even if M. Kergaradec succeeds in either conciliating it or enforcing obedience on the Yellow and Black Flag factions, much will be done towards opening the Yünnan trade. Indeed, I believe this intended expedition of his to the factories originates in the French having called upon the Annamite Government to clear the frontier passes of these bandits, to which it replied it could not do so without assistance, and therefore is of more importance than is at first apparent.

I may now, as briefly as possible, refer to the ecclesiastical position of Tonquin with reference to christianity.

The first missionary to Tonquin was the Italian Jesuit, Julian Baldinotti, who arrived in 1626; he was followed in 1627 by Alexander de Rhodes (French) and Antonio Marquez (Portuguese); these were expelled in May, 1630, but numerous successors followed them. Persecutions followed; Messari died in prison on the 15th of June, 1723. Buccharelli was beheaded with nine Tonquinese on the 11th of October, 1723. John Caspard Crats, born in Germany in 1698, Bartholomew Alvarez, born in Parameo, in Portugal, in 1706, Emmanuel de Alreu, born at Aronca, in Portugal, in 1706, and Vincent de Cunha, born in Lisbon in 1708, were beheaded on the 12th of January, 1737.

After the persecutions of 1737, there was a period of calm, and the King of Tonquin even sent to Macao for some mathematicians, and on the 6th of March, 1751, Father Simonelli and four other Jesuits arrived; but the King changed his mind and did not want them. The Jesuits were replaced by the envoys of the "Missions étrangères" in 1659. In 1679 Tonquin was divided into two religious provinces, Eastern and Western. The Spanish Dominicans took charge of Eastern Tonquin in 1693. The two provinces were again sub-divided, and the Roman Catholic missions in Tonquin are at present—

1st. Western Tonquin (Missions étrangères) created 1679. Monsignore Puginier at Sokien (Hanoi).

2nd. Eastern Tonquin (Spanish Dominicans) created 1679. Monsignore Colomer at Ké-né (Bac-niuh).

3rd. Central Tonquin (Spanish Dominicans) created in 1548. Monsignore Cezon at Biu-chu (Fam-dinh); Monsignore Riano Coadjuta at Ngoc-duong (Hung-yen).

4th. Southern Tonquin (Mission étrangères) created in 1546. Monsignore Ganthier at Xa-doai; Monsignore Croc Coadjuta at Huong-phuong (Bo-chink).

As before mentioned, I called upon Monsignore Puginier, and found him most agreeable and communicative; he was apparently about forty years of age, and said he had been eighteen years in the country, and would probably end his life there, for except under peculiar circumstances, no member of the missions ever returned to France.

There were about 160,000 Christians in his district, being two-fifths of the whole number in Tonquin, namely, 400,000; he has under him twenty-six French and 160 native priests, who are assisted by a large staff of teachers. The head-quarters of the mission are on an estate situated about forty miles from Hanoi, which is formed partly by his converts and partly by himself, producing all that is required for the purposes of the mission. He encourages all kinds of industries, such as weaving, embroidery, silk culture, incrustations (a species of inlaying wood with mother-of-pearl), cigars, after the European shape. The land produces cotton, hemp, castor oil, mulberry trees, for silk culture, betel nut, rice, &c., and their sale helps to support the mission; altogether the establishment comprises some 900 persons, all of whom are fed daily. I remarked upon his cheerfulness under the prospect of never seeing his home again. He said his predecessors had died at their post, as it was his duty to do.

During my stay at Hanoi I visited the French Concession, referred to in the beginning of this despatch. It is finely situated on the right bank of the Songkoi,

close to the city, about fifty acres in extent, and surrounded on three sides by a wall, the fourth facing the river. Above 2,000 Annamite coolies, chiefly women, are engaged in raising it above the highest water level, and a Consulate, barracks, and military store departments are nearly completed. M. de Kergaradec told me that the space allowed was originally smaller, but as the Annamite Government wanted the Examination Hall, which is now the Consulate and barracks, he agreed to surrender it in October next if they would increase the Concession, which they agreed to, and the works are being pressed forward to enable him to keep his promise.

I left Hanoi on the morning of the 12th ultimo, and reached Haiphong the following afternoon. Here we remained until the 16th waiting for a pilot, and on that afternoon got under weigh and left the river for Hainan.

As regards mercantile matters and the resources of Tonquin as a country for trade, my short visit prevented my obtaining all the information I desired. Nothing in fact, but a residence of a month or two could enable me to prosecute satisfactory inquiries in that direction, for it takes time and patience to discover the capabilities of an eastern country.

I arrived at Hong Kong on the 25th ultimo, having been absent just one month.

I have, &c.  
(Signed) B. ROBERTSON, *Consul.*

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